

ISLAMIC CONCEPT of CRIME and JUSTICE



N. HANIF

VOLUME
1

The title "Islamic Concept of Crime and Justice" is a comprehensive and critical analysis of the various types of crimes and offence such as social, political, religious and economic. Justice is essentially a relative concept. In Islam divine justice is enshrined in the revelation and divine wisdom which the Prophet communicated to his people. The revelation, transmitted in God's word, is found in the Holy Qur'an; and the divine wisdom was uttered in the Prophet's own words and promulgated as the Sunna. This two textual sources provide the raw materials for Islamic Law and Justice. In principle, the law led down by divine legislature is an ideal and perfect system. But the public orders, composed of the law as well as the state acts of the ruling and opinion of the scholars on all judicial matters came through human reasoning, are necessary subjects to adoption and refinement to meet changing socio-political and economic condition and the growing needs of the community.

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Islamic Concept of Crime and Justice

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Islamic Concept of Crime and Justice

**Volume-I
Political Justice and Crime**

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Preface

The title "Crime and Justice in Islam" is a comprehensive and critical analysis of the various types of crimes and offence such as social, political, religious and economic. This study has been classified the crimes into four parts-political justice and crime, social justice and crime, religious justice and crime and economic justice and crime. Justice is essentially a relative concept. In Islam divine justice is enshrined in the revelation and divine wisdom which the Prophet communicated to his people. The revelation, transmitted in God's word, is found in the Holy Qur'an; and the divine wisdom, inspired the Prophet, was uttered in the Prophet's own words and promulgated as the Sunna. This two textual sources provide the raw materials for Islamic Law and Justice.

In principle, the law led down by divine legislature is an ideal and perfect system. But the public orders, composed of the law as well as the state acts of the ruling and opinion of the scholars on all judicial matters came through human reasoning, are necessary subjects to adaptation and refinement to meet changing socio-political and economic condition and the growing needs of the community.

The study has been classified in four parts—Political justice and Crime, Social justice and crime, Religious justice and crime and Economic justice and crime. First chapter throws light on introductory outline of the Islamic concept of justice and crime; second chapter deals with the nature and principles of political justice; criminals and muslim rulers has been

described in the third chapter; while the fourth chapter describes the war against the sovereign power. Chapter fifth deals with official corruption and abuse of authority by imperial servants. Social justice and the Islamic order is discussed in chapter six. Chapter seven throws light on nature and punishment of theft and robbery. Sexual offences and Islamic law of punishment has been discussed in chapter eight. Chapter nine gives an emphasis on the religious justice and crime. Apostasy and witch craft has been described in chapter ten while economic justice and offence has been discussed in the last chapter of this book.

I am thankful to all those scholars whose matters have been utilised directly or indirectly in compilation of this title. I am also thankful to my relatives, friends and scholars who encourage me to write on this subject.

N. Hanif

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Introduction

Justice is essentially a relative concept. Whenever a man asserts that he considers his just claim it must be relevant to an established public order under a certain scale of justice is acknowledged. Scales of justice vary considerably from land to land, and each scale is defined and ultimately determined by society in accordance with the public order of that society. Yet no matter how scales differ one from another, they all seem to have certain elements in common and, broadly speaking, may be divided into two major categories.

One category is to be found in societies which assume that men are capable of determining their individual or collective interests and know that which they may need or to which they may aspire; they, therefore, can individually or collectively, establish a public order under which a certain scale or scales of justice are likely to evolve by tacit agreement or by formal action. This kind of justice, a product of the interaction between expectations and existing conditions, may be called positive justice. It is admittedly imperfect and men always endeavour to refine and improve it by a continuing process of social change. The ideal or perfect justice is a mirage, and the real one develops by improvisation from generation to generation.¹

In a society which presupposes that man is essentially weak and therefore incapable of rising above personal failings, the idea that fallible human beings can determine what

their collective interests are and lay down an impartial standard of justice is scarcely acceptable. In such a society, a superhuman or divine authority is invoked to provide either the sources or the basic principles of the public order under which a certain standard of justice is established. Whether the superhuman authority is exercised by a gifted sage or an inspired prophet, the kind of justice that flows from such a source commands respect and can have a lasting impact on the administration of justice. Some of the ancient societies—the Hebrew, the Christian and the Islamic are but three examples—were committed to this viewpoint: God disclosed Himself through Revelations, communicated to men through prophets, in which His justice is embodied."

The justice which flows from such a high divine source is considered applicable to all men and forms another category of justice. In contrast with positive justice, it may be called Divine or Revelational justice. It is the product of intuition, or divine inspiration, and is closely interwoven with religion and ethics. It coincides with Reason and may well fall in the category of natural justice. Aristotle used the term "natural justice" in the sense that it is the product not of social but of natural forces.² Following Aristotle, scholars often equated Divine or God's justice with natural justice, but, unlike the natural-law scholars who were concerned with the relation of justice to society, Christian and Muslim scholars focused their primary concern on the concept of justice in relation to God's Will and related it to the destiny of man.³ Both held that Divine justice is the ultimate objective of the Revelation, expressed in its early form in the sacred laws of Christianity and Islam. In the *Summa Theologica*, St. Thomas Aquinas termed the sacred law of Christianity the Eternal Law, and Muslim scholars called their Eternal Law simply the "pathway" (Shari'a).⁴

The concept of justice embodied in the Religion and Law of Islam, not to speak of Christian justice, evoked an endless debate among scholars concerning both its scope and character and how its standard it to be realized on Earth.

The Sources of Justice

In Islam, Divine Justice is enshrined in the Revelation and Divine Wisdom which the Prophet Muhammad communicated to his people. The Revelation, transmitted in God's words, is to be found in *the Qur'an*; and the Divine Wisdom, inspired to the Prophet, was uttered in the Prophet's own words and promulgated as the Sunna, which subsequently came to be known as *the Hadith*, or the Prophet's Traditions.⁵ These two authoritative or "textual sources," the embodiment of God's Will and Justice, provided the raw material on the basis of which the scholars, through the use of a third "derivative source" of human reasoning called *ijtihad*, laid down the Law and the Creed.⁶ The fundamental principles of the Law and the Creed, and the creative works of succeeding generations, formed the foundation of the renowned Islamic public order. From a scrutiny of all these sources and scholarly works, we shall seek evidence for the reconstruction and interpretation of the various notions and theories that have been spun by Muslim men of learning about justice. Since the scale of justice in any given society must be related to its public order, a few words about the nature of Islam's public order may be useful at this stage.

In Islamic theory, God is the Sovereign of the community of believers; He is its ultimate Ruler and Legislator. The Revelation and Divine Wisdom are the primary sources of the developing public order, presuming to meet the community's growing needs and expectations. The principles and maxims of justice derived from the Revelation and Divine Wisdom were considered infallible and inviolable, designed for all time and potentially capable of application to all men. In principle, the Law laid down by the Divine Legislator is an ideal and perfect system. But the public order, composed of the Law as well as state acts and the rulings (*furu'*) and opinions of the scholars on all matters arrived at through human reasoning (*ijtihad*), are by necessity subject to adaptation and refinement to meet changing conditions and the growing needs of the community.

Since the Divine Legislator did not rule directly over the believers, the enthronement of a Ruler to represent God on Earth, to whom God's authority was delegated, had become necessary to put the law into practice and to rule with Justice.⁷ A new form of government had thus been established based on Divine Law and Justice. This form of government, often called theocracy, is obviously not based on the principle that authority is exercised directly by God (whether as a Pharaoh or a Caesar) but by a representative who derives his authority not directly from God but from God's Law. It is therefore the Law, embodying the principles of Divine authority, which indeed rules and therefore the state becomes not, strictly speaking, a theocracy, but a form of nomocracy. The Islamic State, whose constitution and source of authority is a Divine Law, might be called a Divine nomocracy.⁸

The textual sources, consisting of the Revelation and Divine Wisdom, are the *Qur'an* and the *Sunna*. To these constitutional instruments, the proximate source of authority, all the political leaders and contending parties appealed to assert their conflicting claims to power. Likewise, on the strength of these sources, the scholars sought to legitimize one claim against another by diverse arguments—theological, legal, and others—on the grounds of justice. Although the scholars agreed on the Divine nature of justice, they disagreed on how it should be realized on Earth and formulated various doctrines of justice reflecting the conflicting interests, local traditions, and aspirations of rival leaders and groups in their struggle for power. Legitimacy and justice were often used interchangeably by political leaders, and the scholars, in an attempt to rationalize the legitimacy of rival groups, provided one scale of justice or another drawn from the emerging public order. For an understanding of the standard of justice of each particular group or school of thought, it is proposed to analyze justice from all the aspects that came under discussion—political, theological, legal and others—since a study of each one epitomizes not only the conflicting views about justice but also the methods of debate pursued by each group to formulate a doctrine of justice that would set the conscience of the community at rest and provide stability and continuity.

At the outset the debate on justice began on the political level. In a community founded on religion, it was indeed in the nature of things that public concern should focus first on the question of legitimacy and the qualification of the Ruler whose primary task was to put God's Law and Justice into practice. Since the Prophet, the first Ruler, died without providing a rule for succession, the question of legitimacy became crucial. Should any pretender to the throne seize power without a valid claim, his act would naturally be considered a travesty to Divine Justice. The debate thus was bound to center on the procedural question of the choice of the person who would have a legitimate claim to succeed the Prophet in accordance with the standard of political justice embodied in the textual sources.

Once the debate on political justice started, it never really ended. Like Pandora's box, it became exceedingly difficult to bring political differences under control. It led to schism in the body politic and the rise of rival credal groups and sects, each seeking to rationalize its standard of political justice on one credal ground or another. From the political level the debate gradually shifted to other levels— theological, legal, and others—although ulterior political motivation continued to reassert itself in one form or another. As the Islamic public order advanced, the debate moved to higher levels of sophistication, and scholars in fields other than theology and law—philosophers and other men of learning—were very soon drawn into it. For no great thinker, whether in Islam or in any other community, could possibly remain indifferent to a debate on a subject as engaging and central as justice. But before we proceed further, perhaps a clarification of the literary meaning of justice and other related terms would be in order.

The Literary Meaning of Justice

The meaning of the common usage of words expressing the notions of justice or injustice is not only important in the abstract sense, but also illuminating for an understanding of the manifold aspects of justice; since the literal meaning of words is ultimately the outgrowth of their social or everyday meaning, the writers and thinkers are likely to be influ-

enced by it in the articulation and rationalization of man's needs and expectations in the struggle to achieve justice and other human ideals. Classical Arabic is renowned for its richness in vocabulary and literary expressions. Indeed, it is no exaggeration to say that for every concept or action describing or identifying a particular human activity, perhaps a dozen words in the major lexicons are likely to be found, notwithstanding that each word is not necessarily a synonym, as it may often imply a slightly different shade of meaning from the other. For instance, for the name of God (although this is not a typical example), it may be interesting to note, there are ninety-nine words called the *asma'al-husna* (the beautiful names), each denoting or expressing the meaning of one of His manifold attributes.⁹

For every aspect of justice there are several words and the most common in usage is the word "*adl*." Moreover, there are several synonyms; perhaps the most important of which are the following: *qist*, *qasd*, *istiqama*, *wasat*, *nasib*, *hissa*, *nizan* and others. The antonym of '*adl*' is not a modified spelling of the word '*adl*' denoting its negative meaning—as is the counter word "*injustice*" to "*justice*" in English—but an entirely different word called "*jawr*." There are also several synonyms of *jawr*; some express a slightly different shade of meaning such as *zulm* (wrongdoing), *tughyan* (tyranny), *mayl* (inclination), *inhiraf* (deviation) and others.

Leterally, the word '*adl*' is an abstract noun, derived from the verb '*adala*', which means: First, to straighten or to sit straight, to amend or modify; second, to run away, depart or deflect from one (wrong) path to the other (right) one; third, to be equal or equivalent, to be equal or match, or to equalize; fourth, to balance or counter-balance, to weigh, or to be in a state of equilibrium.¹⁰ Finally, '*adl*' (or *idl*) may also mean example or alike (Q. V. 96), a literal expression which is indirectly related to justice.¹¹

In the conceptual sense, Ibn Manzur, the lexicographer, states that "the thing that is established in mind as being straightforward" is the meaning of justice.¹² Anything which is not upright or in order is regarded as *jawr* or unfair. The

two literal meanings of "straight" and "departure" are implied in the conceptual sense of straightforwardness and uprightness. Needless to say, the notions of "right" and "wrong" are implied in the terms "*adl*" and "*jawr*," as these terms are often used in the broadest sense to include moral and religious values. The notion of "*adl*" as "right" is equivalent to the notions of fairness and equitableness, which are perhaps more precisely expressed in the term *istiqama* or straightforwardness.¹³

The notion of '*adl*' as equality or equalizing is used in the sense of equating one thing to another. This meaning may be expressed either in qualitative or quantitative terms. The first refers to the abstract principle of equality which means equality before the law or of having equal rights as implied in the quranic dictum that "the believers are indeed brothers" (Q. XLIX, 10). The second, stressing the principle of distributive justice, is perhaps best expressed in such terms as *nasib* and *qist* (share), *qustas* and *mizan* (scale), and *taqwim* (straightening).

Finally, the notions of balance, temperance and moderation may be said to be implied in the words *ta'dil*, *qasd* and *wasat*. The first, which literally means to amend or to adjust, expresses the notion of balance, the second and the third which literally mean the "middle" or a place equidistant (or midway) between two extremes, may be taken to imply moderation and temperance. These notions of justice are perhaps more finely expressed in the principle of the golden mean. The believers are not only individually urged to act in accordance with this principle, but also collectively called upon to be "a nation in the middle" (Q. II. 137; XII, 11).¹⁴

The foregoing notions of justice, which may be said to be implied in the common usage of '*adl*', have been summarized in a letter reputed to have been addressed to the Caliph 'Abd al-Malik (d. 86/705), in reply to an inquiry about the meaning of the term '*adl*', by Sa'id ibn Jubayr, who said:

'Adl (justice) may take four forms : A [First], justice in making decisions in accordance with God's saying;

"when you judge among men you should judge with justice" (Q. IV, 61); [secondly], justice in speech in accordance with his saying: "when you speak, you should be equitable" (Q. VI. 153)/ [thirdly], justice in [the pursuit of] salvation in accordance with His saying: "protect yourselves against a day on which no person will give any satisfaction instead of another, nor will an equivalent be accepted from him, nor will intercession avail him" (Q. II, 117); [fourthly], justice in the sense of attributing an equal to God in accordance with His saying: "yet the unbelievers attribute an equal to him" (Q. VI. 1).

As to [God's] saying: "(Q. IV, 128); 'Ubayda al-Salmani and al-Dahhak said that [man's inability to be equitable] meant with respect to love and intercourse. And [the saying that] so-and-so has done justice to so-and-so means that the one is equal to the other. [If] it is said that "no-one is equal to you in our view." It means that "no-one stands with us in thy stead." Justice in [the sense of] weight and measurement means [that a certain thing is] equal [to another] in weight or size. [If] you did justice between two things, you did justice between so-and-so and so-and-so, it means that you have made the two things, or between one and another, to be equal or the like of one another. The doing of justice for a [certain] thing means to make it straight. It is said that justice means the rating of a thing as equal to a thing of another kind so as to make it like the latter."

The literal meaning of *adl* in classical Arabic is thus a combination of moral and social values denoting fairness, balance, temperance and straightforwardness. Logically, Divine Justice would be a synthesis of all these values and virtues; indeed such a conceptual meaning is the theme of the debate among theologians, jurists and philosophers and will be the subject of our inquiry in the pages to follow.

The Notion of Justice in the *Qur'an* and Traditions

The Prophet Muhammad, who seems to have been en-

dowed with a deep sense of justice, found wide-spread inequity and oppression in the society in which he had grown up, and he sought to establish order and harmony within which a distinct standard of justice would be acknowledged. As a Prophet, he naturally stressed religious values, but he was also a social reformer, and his decisions provided precedents on the strength of which the issues that were to arise in succeeding generations were resolved. The idea of justice was of particular interest to him, and he dealt with the problems of his day with uprightness, balance and fairness. Nor was he indifferent to discrimination and inhuman acts, as exemplified in the legislation for the improvement of the status of women, emancipation of slaves (though slavery as a system was not abolished), and prohibition of infanticide and other unjust acts and practices. Moreover, he himself valued certain virtues honored by his followers and he incorporated them in his teachings. As he said in one of his often quoted utterances, his call was not to abolish but to "further the good morals" (*li utammim makarim al-akhlaq*) that had been in existence in society, and he felt compelled to confirm them.

In the tribal society of Arabia, where survival was perhaps the tribesman's primary concern, such virtues as honor, courage, and liberality were more highly prized than other virtues. These were epitomized in the word "muruwwa," consisting of everything that was taken to be praiseworthy and which may be called the Arab *summum bonum*.¹⁶ The muruwwa continued to be viewed so high in Arab eyes in subsequent centuries that al-Maqqari (d.770/1369) in his definition of justice, stated that no one could claim to be just were he to compromise the virtue of muruwwa.¹⁷ But in the exhibition of honour and courage the tribesmen were often brutal and oppressive, especially in the pursuit of *vendetta*, with the consequent subordination of the virtues of fairness and moderation to arbitrary rules of order. The poet Ame B. Kulthum, composer of one of the well known Seven Odes (al-Mual-laqat al-Saba) was not the only one who sang the praise of brutality and oppression attributed to his tribe.¹⁸ The absence of a coherent social order and political unity in the tribal society of Arabia necessarily subordinated the scale of justice

to the requirements of survival, and consequently the appeal to justice took the negative form of retribution, such as retaliation and the payment of blood-money, rather than the positive forms of fairness, balance, and temperance.

The Prophet, while concluding the value of courage and other virtues, felt keenly the need to assert religious and moral values to temper cruelty and harshness. For this reason, the *Qur'an* and Traditions often warned believers against bigotry and oppression, and admonished them that in the fulfillment of their religious obligations they must above all be just. In the *Qur'an* there are over two hundred admonitions against injustice expressed in such words as *zulm*, *ithm*, *dalal*, and others, and no less than almost a hundred expressions embodying the notion of justice, either directly in such words as *'adl*, *qist*, *mizan*, and others as noted before, or in a variety of indirect expressions.¹⁹

Second only to the existence of the One God, no other religious or moral principles are more emphasized in the *Qur'an* and Traditions than the principles of uprightness, equity, and temperance, partly because of their intrinsic value but mainly because of the reaction against the pre-Islamic social order which paid little or no attention to justice. The most important Quranic references to justice are as follows:

God commands justice and good-doing...and He forbids indecency, dishonair and insolence. (Q.XV, 92)

God commands you to deliver trusts back to their owners, and when you judge among men, you should judge with justice. (Q.IV, 61)

Of those We created are a people who guide by the truth, and by it act with justice. (Q. VIII, 180)²⁰

In the Traditions, the Prophet sought to explain the meaning of the abstract maxims of justice enunciated in the *Qur'an* by specific examples, expressed in legal and ethical terms, to distinguish between just and unjust acts as well as to set underlying rules indicating what the scale of justice ought to be. Since the Prophet dealt essentially with practical ques-

tions, the theologians and other scholars found in the Traditions precedents on the strength of which they formulated their theories of justice. However, neither in the Qur'an nor in the Traditions are there specific measures to indicate what are the constituent elements of justice or how justice can be realized on Earth. Thus, the task of working out what the standard of justice ought to be fell upon the scholars who sought to draw its elements from the diverse authoritative sources and the rulings and acts embodied in the works of commentators.

The religious character of the public order, however, imposed by its very nature certain restraints, and the community of believers, distrustful of the capacity of fallible men to legislate for society, discouraged radical departure from the literal meaning of textual sources. Small wonder that many scholars, under popular pressures, were often forced to renounce doctrines seemingly inconsistent with the literal meaning of the authoritative sources, despite the growing needs of society for innovations. However, most scholars felt that they were duty-bound to accept the interpretation of the standard of justice laid down by their predecessors more strictly than by those who sought radical changes.

Scope and Method of This Study

It is perhaps necessary to define at this stage the scope and method of our study, although the subject matter has been outlined in broader terms earlier. Its aim is to inquire into the nature and scope of Divine Justice and to reconstruct from the diverse writings of Muslim men of learning the Islamic theory of justice in all its aspects. It is true that the most permeating aspects of justice were the religio-political and legal, but all other aspects were interrelated and had bearing in varying degree on the life of believers over the centuries. For this reason, some of the seemingly abstract aspects, the philosophical and ethical in particular, were deemed necessary to deal with not only for their intrinsic value, but also because in presenting ideal formulations an implied criticism of existing conditions was revealed which was not always possible to express in official doctrines.

It is proposed in this study to combine the advantages of the idealist and realist methods. An attempt to relate idealism with realism, which may be called "empirical idealism," is a method which I have pursued in other chapter. It is thus not our purpose to elucidate only the norms and values in abstract terms, but to relate them to the various political and intellectual groups and movements which strive to realize them in the form of standards of justice on Earth. More specifically, the concept of justice will be closely scrutinized as defined and determined by text-writers in the context of the public order. The realities of life were indeed not always ignored by theorists; for the scholars, who were considered the conscience of the political community, often echoed the needs and aspirations of believers in their doctrinal postulations of justice. The impact of those who tried to relate doctrines to realities is made nowhere more apparent than in our discussion on the discrepancy between the theory and reality in the scale of legal and social justice. It is the aim of our method to present a systematic study of the Islamic conception of justice within the context of the Islamic super-structure as it evolved from the formative period.

SOURCES CONCERNING FOR JUSTICE

The Muslim Law is commonly referred to as *fiqh*, which is defined as the science of the rights and obligations of man. Although Islam regards the life of this world as purely a transitory stage,²¹ yet, unlike other religions, it does not recommend renunciation of the world; on the contrary, it asks its followers to enjoy to the full the blessings of temporal life²². In fact, the entire fabric of Muslim Law is constructed for guiding the Believer in regulating his life in this world. Whatever its ultimate object, its temporal and mundane aim is to enable-one to lead his life in the fairest, possible way. In order of their importance, the following are the sources of Islamic Law :

1. The *Qur'an*

The *Qur'an* is the word of God and, therefore, the most important source of Muslim Law²³. It is a collection of Divine

Revelations received by the holy Prophet through the agency of the Angel, Gabriel. The *Qur'an* was not revealed as a whole, but came down in pieces, as necessity arose, during the prophetic career of the Apostle of Allah, which lasted about twenty-three years. Whenever a portion of the *Qur'an* was revealed, the holy Prophet asked one of his Companions to take it down. It was also he who prescribed and pointed out the place to which a verse properly belonged. The verses of the *Qur'an* were not written in the time of the holy Prophet in book, form, but were preserved on stray leaves of paper, date leaves, shoulder-blades and other handy materials. They were compiled in the form of a book in the time of Hazrat 'Usman, the third Pious Caliph...

2. The Sunnah

The second source of Muslim Law, in order as well as importance, is the *Sunnah*, which comprises what the holy Prophet said, did, or tolerated in matters of law and religion.²⁴ In quantity, the rules of Muslim Law, found in the examples of the holy Prophet, far surpass those prescribed in the *Qur'an*. In quality, however, the *Sunnah* is considered inferior to the *Qur'an*; but this is often due to the difficulty of proving the genuineness of a tradition. Otherwise, the *Qur'an* has expressly and unequivocally put the word of the holy Prophet on a par with itself, declaring that what the Messenger uttered on behalf of the Sender was to be taken as the sender's Word. It clearly states that the holy Prophet "does not speak of his own desire²⁵," and asks the Believer to follow him implicitly in everything: "And whatsoever the Messenger gives you, accept; and whatsoever he forbids you, avoid²⁶." "Verily in the Apostle of Allah you have the best example for anyone who looks forward towards God and the Day of Judgement."²⁷ The *Qur'an* sternly warns the Believers that, should they choose to ignore the holy Prophet's judgement in any matter and adopt a course contrary to what he prescribes, they shall no longer rank among the Faithful.²⁸

The *Sunnah* is thus an integral part of Islamic Law and is consequently as binding on the Muslims as the injunctions contained in the Holy Book.

3. The Orthodox Practices

The precedents of the times of the first four Caliphs of Islam the third important source of Muslim Law.²⁹ It goes without saying that these precedents may be accepted in addition to the *Qur'an* and the *sunnah* of the holy Prophet, not against them.

4. Opinions of Jurists

The opinions of the jurists form the fourth source of Islamic Law; they consist of *ijma*. (consensus), *qiyas* (individual opinion based on analogy) and *istihsan* (juristic equity or right of preference).

(i) *Ijma* : Literally, *ijma* means "agreeing upon". Technically, it means the view held by the majority of the Muslim scholars of law (*sawad-i-azam*), and is used as a source of elucidation on questions which cannot be decided from the *Qur'an*, the *sunnah*, or the precedents of the Companions of the holy Prophet. *Ijma* derives its strength from the following verses: in one, the *'ulama* are asked by the Egyptian king to explain the significance of his dream and after they have confessed their inability to do so, Joseph (Prophet Yusuf) interprets it.³⁰ In another reference, the *ulama* of the Israelites are stated to realize that the *Qur'an* confirms the ancient scriptures.³¹ In a third reference, which is more relevant, the *Qur'an* asserts that the parables in it can only be understood and explained by the learned³², while a fourth reference asserts that only those who possess learning fear God.³³ A fifth reference states that aside from God, only those, firmly rooted in knowledge, can understand the allegorical parts of the *Quran*.³⁴ And yet another verse enjoins those who do not know to seek guidance from those who know.³⁵

Numerous sayings of the holy Prophet also bless the consensus of expert opinion, as for example, "My people (*ummah*) will never be unanimous in error, and the hand of God is over collectivity, and however quits it is sent to hell."³⁶ "What Muslims agree to be good is also good in the sight of God."³⁷

According to Islamic Jurisprudence, whenever unanimity is reached among the Muslim jurists of the time on a prob-

iem, regarding which there is no guidance to be found in the Holy Book or the *sunnah*, this consensus has the same validity as a verse of the *Qur'an* or the most authentic tradition of the holy Prophet; and whoever denies its authority is to be considered an un-Believer. The authors, however, agree in theory that a later consensus may abrogate a former.

It is said that in spite of the importance of *ijma*, no institution of permanent character was devised to ascertain it. Records abound that the holy Prophet always consulted his Companions in important matters. Again, Hazrat 'Umar Faruq seems to have found in the annual pilgrimage in Mecca an easy and convenient institution to consult the governors of the wide-spread Muslim empire to hold a general and all-empire appeal session of the supreme court and to meet deputations from far off parts of the realm. For a generation or two after the passing away of the holy Prophet, it seemed that the ascertainment of the best and most expedient opinion of the Caliphate was considered to be a government business. Soon, however, civil wars and schismes ensued and the Umayyad Caliphs contended themselves with the opinions of the official jurists, and general consultation fell in disuse. The consequent result was that in succeeding ages private students and scholars alone cultivated the science and the question of *ijma* became a mere fiction.

(ii) *Qiyas* : Literally, *Qiyas* means measuring or comparing and is the method whereby the rule contained in a clear text (*nass*) of the Holy Book, or the *sunnah* of the Apostle of Allah, or even a rule which has been sanctioned by *ijma* (from the *Qur'an* and *sunnah*) is extended to cases, not explicitly covered by the Holy Book and the *sunnah*, on the grounds of material similarity in the nature of the two cases, or by investigating the 'illa (motive) of the provision in the Holy Book and *sunnah* and identifying the existence of the same 'illa in the new case and, therefore, deciding it similarly. The justification for the use of *qiyas* in deciding a case is based on the following verses: "Whoever intercedes in a good cause has a share of it, and whoever intercedes in an evil cause has a portion of it. And Allah is ever keeper over all things."³⁸

Qiyas is a form of *ijtihad* and indeed, like *ijtihad* in general, is considered to be *zann* or fallible and does, therefore, not rank so high as authority as those on a text of the Holy Book, or *sunnah*, or *ijma*. The reason is that with respect to analogical deductions, one cannot be certain that they are what the Law-giver intended, such deductions resting, as they do, upon the application of human reason, which is always liable to err.

(iii) *Istihsan* : It sometimes happens that a rule of law deducted by the application of analogy to a text is in conflict with what has been expressly laid down by some other text, or by the unanimous opinion of the learned. All the four Orthodox Schools of Law agree that in such cases the former must give way to the latter. It may happen that the law analogically deducted fails to commend itself to the jurist, owing to its narrowness and inadaptability to the habit and usage of the people and being likely to cause hardship and inconvenience. In that case, according to the Hanafis, a jurist is at liberty to refuse to adopt the law to which analogy points, and to accept instead a rule which, in his opinion, would better advance the welfare of men and the interests of justice. The doctrine by which a jurist is enabled to get over a deduction of analogy, either because it is opposed to a text or consensus of opinion, or is such that his better judgement does not approve of it, is called *istkhsan*, or juristic equity.

The use of *istihsan* is confined to the Hanafi system alone; the other three Schools of Law are opposed to it. *Istihsan*, not being hampered by rules, is as a source of Law, freer and wider in scope than *qiyas*. Abu Hanifa deserves the credit of having been the first to recognize that a strict adherence to *qiyas* would deprive law of that elasticity and adaptability which alone make it the handmaid of justice.

5. Urf, Adat (Custom and Usage)

The Muslim system of jurisprudence also recognizes the force of custom and usage. The validity of such laws rests on principles somewhat similar to those of *ijma*. In the case of those customs and practices which prevailed in the time of

the holy Prophet when revelation, the recognized primary source of Law, was still active, and which were not abrogated by the text of the *Qur'an*, or the *Sunnah*, the silence of the Divine Legislator is regarded as amounting to a recognition of their legal validity. And as to such custom and usage as have sprung up since the Apostle of Allah's passing away, their validity is justified on the authority of the tradition which clearly states that whatever the Muslims generally consider good for themselves is acceptable to Allah.

A customary law is of inferior authority compared to *ijma*, inasmuch as it is generally based on the practice of the people, while *ijma* implies deliberation on the part of men well-versed in the principles of Law.³⁹

6. Practice of Ordinary Muslim Rulers

The task of providing by legislation for subjects left out in the above is that of the monarch.⁴⁰ By virtue of his office he is the legislator, the defender of the Law, as well dispenser of justice. The ruler of a Muslim.

State is *de facto* its Chief justice

As the head of the realm, it is necessary and, indeed, advantageous for a ruler to respect the law and the decrees of the courts that function under his own aegis. He cannot destroy or weaken an institution of which he is himself the chief.

As individual, however, a Muslim sovereign has no privileged position, though the combination of judicial and executive functions in one person may encourage him to consider himself above the law. The *shari'at* does not recognize the theory that the ruler can do no wrong. He can be against and can also sue. The appearance of Sultan Muhammad bin Tugluq in the *qazi's* court on several occasions as a defendant can be cited as an instance in this respect.

The Muslim rulers in medieval period exercised the power of muting sentences, or what is now-a-days called the prerogative of mercy, provided the punishments did not fall within the jurisdiction of . This prerogative was not used by the four

Pious Caliphs, but was first resorted to by Mu awiya⁴¹ (661-680). In India, both the Sultans of Delhi as well as the Mughul emperors exercised the right or granting mercy in practically every kind of cases.⁴¹ They also heard and decided original cases. Sometimes it was essential also, for there were powerful nobles who would submit only to the decrees of the monarch's court. If a sovereign was conscientious and sat regularly, his court was often sought by the people, as his decisions were quick and impartial, his situation having placed him beyond the limits of fear or favour.

As the chief dispenser of justice, the Sultans of Delhi considered it their duty to supervise the administration of justice and appoint honest and God-fearing men to assist them in the disposal of cases. They alone had the right to set up courts of judicature. According to Muslim jurists, the responsibility of selecting suitable men as *qazis* was very grave. Sultan 'Alauddin Khilji could select only four persons during his reign who could act as *qazi-i-mamalik*; other candidates fell far short of his standard.⁴³

The Sultans were also expected to have themselves a practical knowledge of the law as, in theory, they alone could remove *qazis* from office. In actual practice, however, most of them did not fulfil this condition; they were dependent on the 'ulama in this regard and employed them to assist them decide cases.

Four Schools of Muslim Jurisprudence

1. The Hanafi School : The founder of this school of Jurisprudence, the most popular of the four Orthodox Schools, was Imam abu Hanifa⁴⁴ (699-766). He was fully alive to the new demands on religion as a consequence of the expansion of Muslim political power. At an early age, he had distinguished himself as a scholar and developed wonderful powers of speech, argument and expression. His lectures, delivered at the chief mosque of Kufa regularly, drew large crowds and held the audience spell-bound for hours.

Abu Hanifa's chief instruments in establishing his system were *qiyas* and *istihsan*. He started with the *Qur'anic* text and

developed from it further details. He also insisted upon *istihsan*, which necessitated a careful study of actual conditions in legal thinking. He did not make much use of *ahadis* (traditions of the holy Prophet) in constructing his legal system. Probably the reason for his refrain from turning to the *sunnah* lay his conviction that they related to particular conditions of time and space and could not blindly be applied to new circumstances.

Abu Hanifa believed in a careful and intelligent application of the *Qur'anic* spirit in solving new problems. Consequently, his School is considered the most tolerant School of Muslim Jurisprudence, and "it possesses greater power of creative adaptation than any other School of Muhammadan Law.⁴⁵ As a system of religion-iudicial thought, Von Kremer regards it as "the highest and the loftiest achievement of which Islam was capable⁴⁶."

2. The Maliki School : The founder of this School, Imam Malik bin Anas (715-95), was born and brought up in Madina. He had direct access to the most reliable authorities on *hadis*, because most of the leading Companions of the Apostle of Allah and their successors lived in Madina and narrated traditions from the holy prophet. His *Mawatta* is based on the *ahadis* narrated by them and the juristic verdict given by them. In his time, he was considered the highest authority on *hadis* and his fame in this respect has not suffered by the lapse of time. He was not only a *muhaddis* (narrator of traditions of the holy Prophet), but a renowned jurist as well, and such was in practical touch with actual life.

Imam Malik's doctrines were not essentially different from those of Imam Abu Hanifa, but he did not place much reliance on *qiyas*. He leaned more upon the *sunnah* of the Apostle of Allah and the precedents established by the Pious Caliphs. He upheld the exercise of individual judgement when other sources failed. Being in a better position than Abu Hanifa to be acquainted with the Laws, as laid down by the holy Prophet's Companions and their successors, he embodies them more largely in his system. He recognized principle, corresponding to Imam Abu Hanifa's *Istihsan*, namely, *maslahat* (public wel-

fare) as basis of deduction. To the four main sources of Law, namely, the *Qur'an*, the *sunnah*, the precedents of the holy Prophet's Companions, and *ijma*, he would add *istidlal* ⁴⁷ as a fifth source. His *muwatta* (literally trodden path, implying the agreed practice of the Companions of the Apostle of Allah, which is usually taken as primarily a *Book of Traditions* ⁴⁸, is really a *corpus juris*. It forms a connecting link between the *fiqh* literature of earlier days and the *hadis* collections of later times. The success of *Muwatta* is due to fact that it always takes an average view on disputed points.

3. *The Shafi'i School* : Between the liberal Iraqi and the conservative Madani, many schools rose up. Imam Muhammad bin Idris al-Sharii (767-820), a pupil of Imam Malik and Imam Muhammad (a disciple of Imam Abu Hanifa), acted as intermediary between independent legal investigations and the traditionalism of his time. The School of Law, with which his name is associated, takes rank in number and importance of its followers next only to the Hanafi School. He was noted for his balance of judgement and consideration of views and, though reckoned among the upholders of the *sunnah*, he examined the *ahadis* more critically and made more use of *qiyas* than Imam Malik. He allowed greater scope to *ijma* than Imam Malik, putting a more liberal and workable interpretation on the well-known dictum of the holy Prophet, "My people will never agree in error." But he agreed with his master, Imam Malik, in adopting *istidlal* as fifth source and rejected Imam Abu Hanifa's *istihsan*. He was the first to write a treatise on Usul, or the basic principles and methods of jurisprudence.

4. *The Hanbali School* : Imam Ahmed bin Muhammad bin Hanbal, more briefly known as Imam Hanbal (780-855), the founder of the fourth important school of Orthodox Islamic Jurisprudence, was originally a pupil of Imam Shafi'i. As a *muhaddis* and *faqih*, his reputation stood very high and, in the number of traditions that he collected, no one, even in that age, approached him. He was a man of great piety and uncompromising opinions. In Law, he strictly adhered to the *sunnah*, a much larger number of which he felt himself at liberty to act upon than any other doctor of Islamic Law. His

interpretation of them was literal and undending. He rejected the attitude of Imam Abu represents the attitude of extreme orthodox intransigence. His collection of traditions is called *Musnad*.

With Imam Hanbal the age of independent jurists came to an end, and the works that were done afterwards in developing the legal science were mainly supplementary. Imam Hanbal's remarkable erudition in traditionary learning, combined with the austere piety of his life, gave an impetus to the study of *ahadis*. A band of scholars, headed by Mahammad bin Isma'il al-Bukhari, a pupil of Imam Hanbal himself, devoted themselves exclusively to a scientific investigation of this branch of learning. Bukhari was the pioneer in this enterprise, and his collections are regarded by the Muslims as the most authoritative. His book contains about seven thousand *ahadis*, which he selected as authentic out of six hundred thousand. He died in 869.

Side by side with Bukhari, and in the same field, worked Muslim bin Hajjaj of Nishapur. He died in 874. Muslim's work, though smaller in bulk, can hardly be said to be of inferior authority to that of Bukhari; the collections of these two are, in fact, jointly referred to as the *Sahihain*, or the two correct collections, out of the size collections which are regarded by the Muslims as authentic. The remaining four collections are Jami by Tirmizi (died 892), *Sunan* by Abu Dawud (died 888), *sunan* by Ibn Majah (died 886) and *al-Mujtana* by Nasi (died 915).

References

1. Although a variety of notions of justice are known to exist in such a society, most of them seem to revolve around the two major schools—the utilitarian and the social contract. The most important recent critique of the theories of justice, in which the social contract theory is re-examined and refined, is John Rawls's *Theory of Justice* (Cambridge, Mass., 1971).
2. Aristotle, *Nicomachean Ethics*, 1134-18.
3. While some Muslim philosophers were prepared to equate Divine Justice with natural justice, the early theologians rejected this characteri-

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zation, but later conceded a certain rational element in it (chaps. 3-4)

4. See set. Thomas Aquinas. *Summa Theologica*, Question 93: Of the Eternal Law; for the Sharia.
5. For the view that Divine Wisdom is embodied in the Sunna of the Prophet, see Shafi'i, *al-Risala*, ed. Shakir (Cairo, 1940), p. 32; Trans. M. Khadduri, *Islamic Jurisprudence* (Baltimore, 1961), p. 75.
6. Human reasoning took the form either of analogy (iyyas), exercised by the individual scholar, or of consensus (ijma), exercised collectively by the scholars, presumably on behalf of the community (see Shafi'i, *op. cit.*, trans. M. Khadduri, *op. cit.* chaps. 11-30).
7. God to David: "We have appointed thee a Caliph on Earth so as to judge among men with justice" (Q. XXXVIII, 25).
8. For a discussion of this form of government, see M. Khadduri, *War and Peace in the Law of Islam* (Baltimore, 1955), pp. 14-18.
9. See Abd al-Qahir al-Baghdadi, *Kitab Usul al Din* [A treatise on the fundamentals of Religion] (Istanbul, 1928), I, 119, A list of God's "most beautiful names" may be found in Daud Rahbar, *God of Justice* (justice) (Leiden, 1960), pp. 9-10.
10. See the following dictionaries: Ibn Manzur, *Lisan al Arab*, XIII, 457-58; al-Fayruzabadi, *al-Qamus al-Mubit*, I, 431; II, 415-16; IV (pt.2), 6: al-Zabidi, *Taj al Arus*, VIII, 9-10; al-Maqqari, *Kitab al-Misbab al Manir*, II, 541-42, 689-90.
11. See Abd al-Fa'ul al-Misri, *Mu'jam al-Qur'an* (Cairo, 1948), I, 137-38 / II, 34.
12. Ibn Manzur, *op. cit.*, XII, 457 *al-Jurjani*, *Kitab al-tarifat*, ed. G.L. Flugel (Leipzig, 1835), p. 153.
13. The notions of right and wrong were embodied in the ancient classical conception of justice which Islam subsequently adopted as part of its moral and religious traditions (Ibn Manzur, *op. cit.*, XV, 266-72).
14. See Baghdadi, *op. cit.*, pp. 131&33; Shatibi, *al-Muwafaqat* (Cairo, n.d.), II, 163-67. For commentaries on "wasat" (middle) to mean justice in the sense of moderation, see Tabari, *Tafsir*, ed. Shakir (Cairo, 1955), III, 142.
15. See Ibn Manzur, *op. cit.*, XII, 458; for translation of all relevant passages, see E. W. Lane, *Arabic-English Lexicon*, bk. I (pt. 5). 1972-75.
16. For references to virtues in pre-Islamic literature, see the letters and proverbs attributed to Aktham B. Sayfi in al-Mahdani, *Majma' al-Amthal*, II, 87-145; for the idealization of these virtues, see Sharfara's ode, "Lamiyyat al-arab" in M. Badi Sharif, ed., *Lamiyyat al-Arab* (Beirut, 1964). For the meaning of muruwwa, see Bishr Faris, *Mababit Arabiya* (Cairo, 1930), pp. 57-74.
17. Maqqari, *op. cit.*, II, 542.
18. The Seven Odes were renowned not only for their literary excellence

but also for their vivid description of Arab character and Arab way of life before Islam. See A. J. Arberry, *The Seven Odes* (London, 1957).

19. The words 'adl and qist alone recur in the Quran in various forms over fifty times. See G.L. Flügel, *Concordantie Corani Arabicae* (Leipzig, 1842).
20. For further references injoining justice and prohibiting injustice, see Q. III, 100, 106, 110; ix, 113; XXII, 42; XXXI, 16; and others.
21. *The Qur'an*, 3:14.
22. *Ibid.*
23. *Ibid.*
24. The importance of the *sunnah* as a source of Islamic Law next to the *Qur'an* is apparent from the following verses of the Holy Book: "O you who believe! Obey Allah and obey the Apostly, and those of you (Muslims) who are in authority/ (and, if you differ in anything among yourselves, refer it to Allah and His Apostly, if you believe in Allah and the Last Day; that is better and more suitable for final determination." 4:59. Again, "He who obeys the Apostly (i.e. the holy Prophet) has indeed obeyed Allah." 4:80.
25. *Qur'an* 53:4.
26. *Ibid*, 59:7.
27. *Ibid*, 33:21.
28. *Ibid*, 4:65.
29. This is because the Apostle of Allah himself has, times without number, impressed upon the Muslims the necessity of taking his Companions as examples for their guidance. On one occasion, he is reported to have referred to them in these glowing terms. "My Companions are a trust committed to my Community (*Ummah*)."
30. *Qur'an* 12:43.
31. *Ibid*, 26:197.
32. *Ibid*, 29:43.
33. *Ibid*, 35:28.
34. *Ibid*, 3:6.
35. *Ibid*. 21:7.
36. *Mishkat*, vol. 1.p. 112.
37. This tradition is too-well known to require a reference.
38. *The Qur'an* 4:85.
39. *Muhammadan Jurisprudence*, p.55.
40. It finds its support in the classical example of Mu'az bin Jabal. When Mu'az was being sent as governor of Yemen in 630, the holy Prophet

asked him "how will you decide the cases that will be brought before you?" Mu'az replied, "I shall decide them according to the Book of God." The holy Prophet then inquired, "What will you do, if you find nothing concerning (a particular matter) in the Book of God?" Mu'az answered, "Then I shall decide it according to the *sunnah* of God's Apostle." The holy Prophet further questioned, "And if you find nothing about it in the *sunnah*?" Mu'az reverentially submitted, "In that case I shall use my own discretion without hesitation." The Apostly of God expressed his delight at this answer by patting Mu'az upon the chest and said, "Praise be to God."; *Musnad*. vol.5, p.236; also Ibn S'ad's *Tabaqat*, III, p.584.

41. *Spirit of Islam*, p. 280.
42. The prerogative of granting mercy enhanced the personal prestige of the ruler, and this fact may have influenced the Sultans and the Mughul Emperors in their policy of insisting upon death sentences being submitted to them for confirmation, in order that they might have opportunities of commuting them in suitable cases.
43. The four chief *qazis* were Sadruddin 'Arif, Jalauddin Walwaji, Ziya-uddin of Bayana and Hamiduddin Multani: Barani, 351-52.
44. His real na'me was N'uman; Abu Hanifa was his honorific title. He was born at Kufa where his father, Sabit, was a prosperous merchant.
45. *History of the Arabs*. pp. 397-98.
46. Cited in *Ibid*, p. 398.
47. *Istidlal* is a principle of juristic deduction which, according to Imam Maqlik's School, does not come within the scope of *qiyas*; *Muhammadian Jurisprudence*, p. 28.
48. It contains about, 2.00 *ahadis*, which have some bearing on juristic verdicts.

Part—I

Political Justice and Crime

Political Justice

Political justice, often regarded as the principal end of the state, is justice in accordance with the will of the sovereign. Aristotle, in making a distinction between a variety of narrow and wide forms of justice, considered political justice to be the widest in scope; its scale belongs to the state, which determines what is just and unjust.¹ The sovereign will may or may not be just, depending on whether state acts contain some elements of justice—legal, ethical or social—or whether they merely assert a particular interest, personal or otherwise. Since political justice is weighed in state acts, the sovereign will determines how much of the elements of justice state acts should contain. In the pursuit of the perpetuation of itself, the state may make concessions to vested interests which often compromise legal or social justice; it may even punish innocent opponents advocating radical ideals on the grounds of vitiating its acts. Political justice is thus a function of political aims; in the final analysis, however, it is the product of complex forces, varying from lofty ideals and social claims (some dictated by public pressure and others by group interests) to personal ambition, and often legal justice—not to speak of ethical or social justice—is subordinated to political convenience.²

If the state acts were contrary to the standard of justice embodied in the public order, how long could they be enforced? It is true that they may temporarily be enforced, but it is inconceivable that they can be tolerated indefinitely. Under social pressures, they would eventually be disavowed and repudiated by peaceful or violent methods. If the state is ever to endure, its acts must conform, or give the impression that they have conformed, to an acknowledged standard of justice embodied in the public order.

Whether the public order is the outgrowth of positive law or considered to have been derived from an ultimate superhuman power is a matter to be determined by the community. In Islam, the believers were committed to the doctrine that their public order was ultimately derived from a high divine source. In its earthly form, that source consisted of Revelation and Wisdom, the former embodied in the Qur'an and the latter in the Prophet's Sunna (Traditions). These were often called the primary of textual sources of the Islamic public order.

The Expression of Divine Will

In conformity with its public order, political justice in Islam—indeed, all other aspects of justice—proceeds from God, the ultimate Sovereign, whose Will is not exercised directly upon His subjects (the community of believers), but through the Prophet and the Rulers (Imams) who succeeded him. The believers are commanded to observe the Law and obey God's representatives who, "appointed...to judge among men with justice" (Q. XXXVIII, 25), are to exercise God's Sovereign Will on Earth. "O you who believe," it was decreed in the Revelation, "obey God and obey the Apostle and those in authority among you; if quarrel about anything, refer it to God and to the Apostle" (Q. IV, 62). So the Prophet was granted the power to exercise God's Sovereign Will, and he was commanded to rule in accordance with the "truth" and the "path of God" (Q. II, 24).³ The "truth" and "the path of God," according to most commentators, were equated with "righteousness" and "justice."⁴ The Prophet's rulings, on all matters of public concern, were taken to conform to the right-cousness and jus-

tice of God (Q.IV,2).⁵ If the Prophet ever erred or was faulted, his errors were at once corrected by Divine Command.⁶ Little wonder that the Prophet's rulings and acts established precedents on the strength of which judges made decisions and the scholars ('ulama') formulated their doctrines concerning all aspects of justice.

The Prophet, however, suddenly died before the structure of the political community was completed. There were fundamental questions as well as pending issues that had yet to be resolved. If the Prophet had considered them, he died before having attempted to solve them. The most immediate issue was, of course, the question of the "legitimacy" of the successor (Caliph) chosen after him. If legitimacy is taken to mean "the right to rule" in accordance with a recognized standard of political justice, it would in Islam have to be the true expression of the Divine Sovereign Will. Since Legitimacy could no longer be confirmed by new prophecy,⁷ it devolved upon the community to confirm it by consensus, provided the chosen successor would exercise his powers in accordance with the standard of justice set in the Revelation (Qur'an) and Divine Wisdom (Traditions). Practice preceded the establishment of a rule, and the precedent set by the enthronement of the first Caliph provided the source on the basis of which the standard of political justice became acceptable to the political community, but this source was challenged later.

Three major schools of thought gradually began to emerge, each representing a political group claiming that its principle of legitimacy conformed more accurately than others—indeed, each claimed that its principle of legitimacy was the only valid one—in accordance with the standard of political justice embodied in the Qur'an and the Traditions. The elaborate theories of the Imamate (Caliphate) which the followers of the various sects and schools of thought advocated were not formulated by the early pretenders to the Caliphate but were the product of the events and developments that followed the *fait accompli*. The scholars of succeeding generations refined and articulated the principles of legitimacy and political justice of rival schools which had already been evolving.

Two of these schools—the Sunni (Sunnite) and the Shi'i (Shr'ite)—representing the major divisions of Islam, initially agreed on at least three fundamental principles: first, that the Imamate was necessary for the survival of the community and for putting the law into practice; second, that the Imamate, in order to be just, must be held by a member of the Prophet's family (according to Shi'i doctrine) or by a member of Quraysh, the Prophet's tribe (according to the Sunni doctrine), who claimed to have understood correctly how the Sovereign Will bequeathed by the Prophet was to be exercised; third, that the Imam should possess certain qualities of seniority and reputation (charisma, experience and others) considered necessary for the discharge of his duties as commander of the believers and head of state.

Broadly speaking, these principles may be taken to provide the minimum standard of political justice, namely, that the Divine Sovereign Will must be exercised either by a member of the Prophet's family or a member of his tribe. The Shia, however of the Prophet's family or a member of his tribe. The Shi'a, however, insisted that only a member of the Prophet's family could exercise the Divine Sovereign Will with justice, whereas the Sunni argued that membership in the larger circle of the Prophet's tribe was quite adequate for the requirements of political justice. The Shia, arguing that legitimacy must be in accordance with the Sunna of the Prophet, invoked a Tradition which stated that Ali, the only candidate from the Prophet's family (he was the Prophet's cousin and son-in-law) had already been designated an Imam by the Prophet himself, and 'Ali, the first Imam, bequeathed the Imamate to his descendants in accordance with the rule of seniority.⁸ No other Imam, according to the Shi'i doctrine, would be capable of exercising the Sovereign Will with justice in any other manner. The Sunni, rejecting the authenticity of this Tradition, invoked another Tradition attributed to the Prophet in which he said that the Rulers of his community (al-umara) should be from the tribe of Quraysh (the Prophet's tribe), but he laid down no rule specifying how the candidate from that tribe would become an Imam; therefore it was taken for granted that the choice of the Imam rested

with the community as a whole.⁹

Other doctrinal principles ensured from disagreement on procedural justice, revealing with greater emphasis the deepening differences between the Sunni and the Shi'i communities. Since the first successor to the Prophet was chosen in accordance with a Sunni precedent (and subsequently the Sunni doctrine prevailed), the Shia (partisans of 'Ali) continued to assert the claim of 'Ali as the only legitimate one. Moreover, since the administration of justice under Umayyad rule was not always tolerant toward dissident groups, the leaders of heterodox sects were often persecuted and put to death on flimsy evidence of subversive activities. Small wonder that the Shia could with good reason denounce Sunni rule as unjust and characterize the Sunni *Imamate* as the *Imamate* of injustice (*jawr*). The Shi'i criticism of Umayyad highhanded rule did not necessarily mean that the Sunni *Imamate* was inherently unjust, since many Sunni leaders and scholars who supported Sunni Imams deplored Umayyad repressive measures. Nevertheless, the Shi'a continued to assert that their principle of the *Imamate* was the only one which could insure justice. The legitimacy of the Shi'i *Imamate*, claimed by its followers to rest on sound principles of political justice, may be summarized as follows:

1. The first Imam was designated by the Prophet who was empowered to exercise God's Sovereign Will. The Prophet, it is held, passed to the Imam an esoteric knowledge (*al-ta wil*) by virtue of which he could provide the explicit and implicit meaning of the Revelation and the Law.¹⁰
2. The Imam, a member of the Prophet's house, inherited by birth and upbringing special qualities and qualifications which rendered him immune to human failings. As a consequence, he is considered sinless (*ma'sum*), a quality which enabled him to be not only infallible in decision-making, but also impeccable in character. In Shi'i theory, the Imam is the most qualified man, after the Prophet, to exercise God's Sovereign Will by virtue of membership in the Prophet's house. No other person

outside that house is capable of exercising God's will with justice. He is the Imam al-Afdal: the Imam *par excellence*.

3. Possessing such unique qualities, the Shi'i Imam is the only Ruler who can command public respect; respect; partly be the charisma inherent in his personality and partly by the allegiance and loyalty (*walaya*) which his followers owe to him as a religious duty. As the Imam al-Afdal, he is the only one equal to the requirements of political justice and capable of providing effective leadership and achieving the ends of the state.¹¹

The Sunni doctrine of the Imamate, in contrast with the Shi'i doctrine, is based on the assumption that the Prophet never really designated Ali or any other one to succeed him as the first Imam. The enthronement of an Imam, in the absence of any clear rule on the matter, must therefore rest with the community which would act on behalf of the Prophet, and ultimately on behalf of God. The choice of the Imam by the community (*al-hay'a*) is performed in accordance with the principle of *ijma* (consensus), based on the strength of Tradition from the Prophet that the agreement of the community on public affairs is an expression of God's Sovereign Will. The voice of the community, according to this Tradition, is an echo of the voice of God: *vox populi vox Dei*.¹²

The choice of the Sunni Imam by the community introduced a "popular" factor into the legitimacy of the Imamate. Under the Prophet, the Islamic state was a form of polity based on a single contract arrangement, whereby the Prophet, appointed to rule by Divine Command, was accepted by the people in accordance with the principle of *pactum tacitum*. The Shi'i doctrine of the Imamate, based on the principle of designation, sought to perpetuate such an arrangement. Thus the introduction of the consensus of the community as a principle of legitimacy changed the Islamic state from a single-contract to a two-contract arrangement. The double or two contract theory is based on the assumption that once a political community is formed by one contract, the Ruler is enthroned by another contract, to govern in accordance with

certain conditions and limitations on his authority. The Sunni Imamate, based on a second-contract theory, provided that the Imam would carry out only the obligations which he and the community had accepted, in accordance with the Law laid down by the Prophet. Since the Prophetic legislation came to an end, the Imam's functions were reduced to the implementation of the Law and to "judge among men with justice" (Q. XXX-VIII, 25). Nor was he necessarily the best (*al-afdal*)—certainly not as infallible—as the Shi'i doctrine stipulated.

Granting that such an arrangement was acceptable to the community, to whom would the Imam be responsible? Under the single contract theory, the Imam owed his appointment to God and would be responsible only to Him. In accordance with the double-contract theory, the Imam was enthroned on the basis of certain constraints and limitations to his power. Since his power was derived from and limited by the Law, he owed only his enthronement to the community. Nor could he be removed after he had assumed power, according to most writers, but if he failed to fulfill or was incapacitated from fulfilling his duties, he had no right to remain an Imam. In contrast with the Shi'i doctrine, the Sunni doctrine has added an element of democracy (through the exercise of consensus) to its scale of political justice, notwithstanding that authority under both doctrines is derived from the Law (and ultimately from God)—not from the people. Before making decisions, however, the Sunni Imam was under obligation to seek consultation (*shura*) with the scholars on all matters concerning Law and Religion, a symbolic rule that public consent of the Imam's exercise of God's Sovereign Will was necessary.

Despite the virtual control of power by a Sunni Imam, the Shia never really stopped to question the legitimacy of the Sunni Imamate. After Ali (d. 60/661), al-Husayn, his second son,¹³ claimed the Imamate and met his demise in an attempt to seize power in an encounter on the outskirts of Karbala (near the River Euphrates) on October 10, 680. That event, commemorated every year on the tenth of the month of Muharram, is an occasion of mourning with intent to display a feeling of repentance for the fall of Husayn. The tragedy of

Karbala is considered the *cause celebre* of justice in the struggle against oppression under Sunni rule. Husayn's descendants, never giving up their claim to the legitimate Imamate, continued to challenge Sunni rule until the legitimate Imamate, continued to challenge Sunni rule until the Twelfth Imam suddenly disappeared in 260/874, when he was still an infant. In accordance with Shi'i teachings, the imam went into *ghayba* (absence)—he is not in evidence physically, but his spirit is considered still with the fold. He will eventually return in the capacity of al-Mahdi (Messiah) to reestablish Shi'i rule. During his absence, the Shi'i community is warned that it might suffer injustice under the imam of injustice (imam al-Jawr) until the hidden Imam will return to reestablish legitimacy and justice.¹⁴

The Shi'i doctrine of the Imamate can hardly be considered to have advanced the cause of political justice, since the Shi'i Imam claimed monopoly of power without limitation, whereas the Sunni doctrine, stressing the prerequisites of *ijma* (consensus) and consultation (*shura*) with consellers (the scholars), is inherently opposed to the concentration of power in the hands of one leader. The school of thought that stood in opposition to both Sunni and Shi'i doctrines and advocated a radical notion of political justice was the Kharijite (often called Khawarij), whose followers called themselves the partisans of justice (*ahl al-adl*). Its doctrine of the Imamate represented a third scale of political justice.

The Khariji Doctrine of Political Justice

Representing established houses and prominent clans, the Sunni and the Shi'i Imams paid little or no attention to the cause of the common man—let alone the subject races—and were preoccupied with a struggle for power under the guise of legitimacy, which led to the uprising of the tribes in the provinces and culminated in the murder of Uthman, the third Caliph, in 35/656. Under the rule of the Caliph Ali, in whose name the Shi'i doctrine of political justice was identified, the Kharijites organized a political party which advocated a revolutionary doctrine of justice—indeed, a doctrine touching almost all aspects of justice—challenging the scale of justice of other

rival groups.

The Kharijites, rejecting both the Sunni and Shi'i doctrines of legitimacy, maintained that sovereignty belongs to God, and He alone is the Ruler and Judge among men ("la hukm illa li-Allah").¹⁵ Its exercise, they held, is not the privilege of a few leaders but the responsibility of all men who should participate in the management of public affairs in accordance with the scale of justice laid down in the Qur'an and the Traditions. In accordance with these textual sources, they added, no distinction among believers should be recognized save on the degree of their Godfearing (Q. XLX, 13)—otherwise all are equal in the eyes of God. Moreover, the Kharijites made a distinction between outward and inward belief and contended that only men who subscribed to inward belief (*iman*) and obeyed the Law and fulfilled their duties strictly were true and just believers who could live in peace and harmony.

In theory, no Imam was necessary to enforce the Law if everyone were to obey the Law and fulfill their duties. Most Kharijites, however, saw the need for an Imam to enforce the Law and achieve justice. Only the followers of Najdat B. Uwaymir, leader of radical group, held that there was no need for an Imam.¹⁶ The Najdites, considering religious and moral obligations an adequate substitute for government, may be regarded as the philosophical anarchists of Islam. They held that inward belief can possibly supersede discord and turn men into well-behaving individuals—therefore authority was not necessary for society.

Before men could become true believers, the Kharijites admitted that there was indeed the need for an Imam, but they reserved the right to remove him if he proved corrupt and inefficient, since God would not possibly approve of such rulers. However, the legitimacy of the Imamate, they held, should rest not on empty claims of legitimacy, as Shi'i and Sunni maintained, but on sound principles of political justice derived from the textual sources. Since there is no evidence in the *Qur'an* or the Traditions concerning the manner in which the Imam should be enthroned, he must therefore be chosen by the community from among the most highly quali-

fied (*al-afdal*) without distinction of tribe, race, colour, or class.¹⁷ In addition to the enforcement of the Law and the pursuit of justice, the Imam is also called upon to prosecute the jihad (just war)¹⁸ which is individually and collectively binding on his followers, and stand against the unbelievers, presumably until they become true believers in Kharji eyes. When such a goal is achieved, they held, there would no longer be a need for the imamate and the state, both logically and doctrinally, will "wither away"—only the rule of Law would prevail.

The *Kharijites*, though preoccupied with political justice, talked about justice in its widest sense. As a tribal community, they led a simple and austere way of life and rejected the worldly ways and lax social habits of urban communities. The values they honoured, especially freedom and a certain measure of equality, are still to be found in the tribal society of today; but to the *Kharijites* these values and traditions were interwoven with the creed and observed almost as religious duties."

Owing to their extreme views, rejected by all other groups, the *Kharijites* found themselves completely isolated. It is true that not all *Kharijites* adhered to radical views; only one group, the followers of Abd-Allah Ibn Ibad—now called the Ibadites—survived, whereas the others, who persisted in their struggle for justice, vanished in bloody wars with their neighbours.²⁰

The significance of the *Khariji* notion justice is the comprehensive and pervasive meaning given to it. If "the believers are brothers" (Q.XLIX, 10), said the *Kharijites*, then all believers should participate in the exercise of God's Sovereign Will and gain the benefits of justice and other values of the Islamic brotherhood. They were the first group to confront the community of believers with basic issues concerning the relationship between authority and the individual—in a deeper sense they raised the question of fundamental human rights—and to demand a definition of its position on the central question of political justice. These and other unresolved issues became the subject of debate in the following generation, especially by the Mutazila, who, like the *Kharijites*, called themselves the partisans of justice.

The Doctrines of Qadar and Jaba

Second only to the Imamate, no doctrinal question in early Islam stirred more emotions and political controversy among the believers than the question of whether human acts were predetermined—predicated by God—or produced by man's free will (*ikhtiyar, liberum arbitrium*). The first believer who raised the question may never be known; however, the Kharijites, denouncing unjust acts in all forms, were perhaps the earliest organized group who advocated the notion of qadar (power) and held man responsible for his unjust acts. We also know that a discussion about predestination and free will began shortly after Islamic rule had been established in centers where Christian monasteries existed in Syria, Iraq and Qgypt, and Muslim theologians who came into contact with them began to discuss and refine their views about predestination and free will.²¹

The doctrine of *qadar* is based on the premise that man, upon his creation by God, was granted capacity or will-power—hence the term *qadar* (power)—to produce his own acts, and therefore must be held responsible for them. By contrast, the doctrine of *jabar*, which literally means compulsion, is based on the assumption that both man and his acts were created by God and therefore the question of human responsibility is irrelevant. The debate between the two schools of *qadar* and *jabr*, beginning as a controversy over political issues, gradually shifted to an inquiry into the nature of human responsibility and the broader philosophical question of voluntarism and involuntarism.²²

The political aspect of justice was at the outset central in the controversy between the advocates of *qadar* and *jabr*. For this reason, the *Kharijites*, opposed to the Umayyad caliphate, talked about human responsibility and faulted its repressive measures—denouncing them as unjust and illegal, on the grounds that they were contrary to God's Sovereign Will and Justice. The Umayyads, on the other hand, finding in *jabr* a legitimizing doctrine of the *status quo* (and consequently of their claim to the Imamate) as an act of God, repudiated the doctrine of *qadar* and persecuted its advocates. Meanwhile,

the shia, considering Umayyad rule unjust and devoid of legitimacy, found in the qadarite doctrine of voluntarism justification for their opposition first to the Umayyad and then the Abbasid regimes, and adopted its as part and parcel in their teachings. The Qadarites held that all human acts were the product of a will-power granted to men by God, and that each man was free to choose between the paths of justice and injustice. Since the Umayyad caliphs had by their free will, according to the Qadarites, chosen to exercise God's Sovereignty contrary to the scale of justice laid down in the Law, they had forfeited their right to rule; therefore, their claim to the legitimacy of the Imamate was null and void.

The Umayyads rejected both the Khariji and the Shi'i claims to legitimacy with equally strong arguments. They reiterated the well-known Sunni position on the question of the Imamate that in the absence of a clear rule in the *Qur'an* and the Traditions, the choice of a successor to the Prophet was a matter necessarily delegated to the community of believers, who were called upon to exercise it on the basis of *ijma*. It was in accordance with this principle that the first four caliphs were elected and confirmed by the *bay'a* (public delegation), including the election of Ali (the fourth Caliph), despite the claim of his followers that his enthronement as Imam rested on the grounds of designation by the Prophet. Upon his assassination in 40/661, Muawiya, the first of the Umayyad caliphs, was elected caliph in accordance with the same rule as his predecessors. This rule, the basis of Umayyad legitimacy, became the familiar Sunni claim to political justice for succeeding regimes.²³

But this was not all: The Umayyads tried to defend their position against allegations of injustice by theological arguments. They invoked the doctrine of *jabr*, which stated that human acts were not created by man but were predicated by God, and sought by such an argument to validate their policies and actions. Muawiya, founder of the Umayyad house, was perhaps the first who argued that his claim to the caliphate was confirmed by God. As evidence of this confirmation, he cited his historic appeal to the community of believers for

arbitration over his conflict with Ali on the basis of the Qur'an, and claimed that God granted him support for his assumption of power as the first Umayyad caliph. ²⁴It is true that Muawiya introduced certain modifications in the scale of political justice, such as the nomination of his son as a successor (which compromised the principle of choice by the community of believers) and his emphasis on a temporal outlook of the Imamate. ²⁵But Muawiya and his successors, finding their opponents invoking Qadarite doctrines to undermine their position, sought to rationalize their legitimacy on jubarite grounds. The doctrine of jabr, presuming that the drama of history is an expression of the Divine Will, became the official doctrine of the Umayyad court, because it called for obedience to and acceptance of the status quo. Perhaps in no other document had that official position been made more clear than in a letter issued by the Caliph Walid II to his governors (in Iraq and other provinces) on the occasion of the nomination of his two sons, al-Hakam and Uthman, to become successors after him, in the year 125/734. This was not the first official statement on the subject, but it was perhaps the most remarkable expression of the Umayyad doctrine of political justice, intended to be a reply to Qadarite critics of the Umayyad regime. The relevant parts are as follows:

The Prophet's successors as Caliphas were appointed by God and charge with the execution of His commands....The Caliphs who came after, the Prophet followed the law and justice as it had been established (by Him)....Each Caliph followed one another in accordance with God's commands which caused them to inherit all the affairs of the Prophet. He appointed them his successors and not one can oppose their right to rule without being thrown down by God, not forsake the community without inviting destruction...God has always made it possible for the Caliphate to overcome those who rebelled and has made them an example and an admonition to the rest of the community...When God said to the angels: "Verily, I am about to appoint a caliph on earth," they said: "Will you appoint one who will be evil and shed blood while we

proclaim thy praise and call thee holy?" He said: "Verily, I know what you know not (Q.II, 28)."

And so by the Caliphate God makes remain whom he makes remain...and He knows that there is no support or benefit for anything except by his obedience....Whoever accepts what has commanded receives his rewards....and whoever turns his face from God's commands forfeits his shares and disobeys the Lord and loses this world and the hereafter....Obedience to God is the key to all these matters; by obedience to God men attain happiness and receive reward, but in disobedience is the revenge and anger and torture of the Almighty....Therefore, adhere to obedience of God in whatever befalls you, for you have seen the evidence of God's judgement on his Caliphs by enhancing them and by making their arguments prevail and by repelling the falshood of those who compete or take issue with them....

To put an end to bloodshed and disunity, God has instituted the Caliphate as a means to insure security and maintain harmony and solidarity....The Caliphate is a safeguard against evil and destruction.

...And the Caliph, praying for God's help, has been fit to present to you a covenant, subject to your acceptance, that al-Hakan, his son, and after him Uthiman, shall rule and hope that they will serve the office with the best virtues that God has given them.²⁶

In reply to its critics, the Umayyad Imamate is represented in the Caliph Walid's letter as a divine institution, designed to enforce the Law, maintain unity of the community, and administer justice. To achieve these ends, the caliph was entitled to obedience; those who opposed him would incur God's displeasure in life and perdition in the hereafter. All the events that had taken place in the past, the letter stated, were in accordance with God's Will, and the caliphs were to maintain unity against dissension with God's assistance and hence with His approval. Needless to say, the aim of Walid's letter was to identify Umayyad political justice with the doctrine of predestination, seeking support of the

advocates of *jabr* for the regime against their opponents who invoked the doctrine of *qadar*.²⁷ But it was not only the doctrine of *jabr* that provided validation for Umayyad political justice. The doctrine of the suspension of judgment, advocated by the Murji'ites, provided a convenient justification for all who wished to dissociate themselves from heterodox controversies. They tried to divert the debate on justice from political to other aspects, and they seem to have directly or indirectly supported the Umayyad position.

The Doctrine of the Suspension of Judgement

The deepening controversy over legitimacy and political justice among rival groups led to accusations and counter-accusations of *kufr* (heresy or unbelief) and the possible consequent disqualification of membership in the community of believers by one another. Were the believer ever accused of *kufr*, he would be liable for punishment with eternal fire in Hell. Some Kharijites went so far as to declare that he who is accused of *kufr* would be punished both in the hereafter as well as while still alive. Others held that he should be punished with death only if he failed to repent.²⁸ The doctrine of *kufr*, so often invoked in political controversies, aroused the concens of conscientious believers who objected to religious sanctions against innocent believers for differing political opinions. They urged moderation and called for the separation of religious and moral questions from political controversies.

Under these circumstances, there was a widespread feeling that an end should be put to accusations of *kufr* and several groups, individually and collectively, sought to discuss questions of faith irrespective of political opinions. Such groups called the Murji'a (Murji'ites)—men who advocated the doctrine of suspension of judgement (*irja*) on political issues of the day. They were the first to initiate a discussion on the question of the destiny of man in terms of moral and religious responsibility, apart from differences on questions of political justice. They came into prominence early in the Umayyad period at a time when conflict between Orthodox and heterodox leaders had inflamed emotions to a high pitch and the need to diffuse tensions was widely felt. Because

they tried to divert the discussion from political to moral questions, most Murji'ites were on good terms with the authorities, although some, holding qadarite views construed to be dangerous to the state, were looked upon with suspicion and disfavour. They continued to influence opinion until the latter part of the Umayyad and the early 'Abbasid periods and laid the ground for thinkers of the following generation—*Mutazilites*, *Ash'arites* and others—to discuss justice primarily from theological and philosophical perspectives.

The *Murji'ites* maintained that rival political leaders, whether they belonged to Orthodox or heterodox sects, must be considered true believers, regardless of the accusations of kufr by one party or another, so long as they affirmed their belief in Islam in word and deed. On the central question of legitimacy, they held that no believer really knew which party was right or wrong. Only on the Day of judgement (the Last Day), will the truth be known when God will pronounce the final word. And He, "the Merciful and Compassionate" (Q. 1, 1), Might on that Day forgive the party that was wrong. If God were to forgive even the party that was wrong, "who are we," the *Murji'ites* might well say, "to condemn the believer with unbelief before God declares His final judgement." Therefore, the *Murji'ites* argued, one is bound to suspend judgement on questions involving different political opinions.

The doctrine of "the suspension of judgement," though seemingly an expediency in favour of the authorities, led to religious and moral debate on the meaning of *iraja* (literally deferment). Broadly speaking, it was construed to imply that believers were under no obligation to take sides on questions of political justice. In a deeper sense it meant that each believer had an inherent right to hold his own opinion on controversial issues, immune to accusations of kufr, so long as he believed in the existence of One God, and in the message of His Apostle. "Iman" (inward belief), said Jahm B. Safwan, "is the acknowledgement of God and His Apostle"; nothing else was required, not even prayer to God or other ritualistic performances, although others held that "the love of God" and the acknowledgement of His existence by tongue was

necessary for inward belief.²⁹ Everyone—Muslim, Christian and Jew—who believed in God and in an Apostle of God was a "believer", according to some Murjites, since knowledge of God was shared by all believers, not only by Muslims. Abu Shimr, and early Murjite, talked about justice irrespective of its political implications and held that man is inherently "free" to choose between the paths of justice and injustice.³⁰

The *Murji'ites* did not form a well-defined school of thought, since many of them held differing views about human responsibility and the destiny of man. They claimed to include among their early adherents such men as al-Hasan al-Basri (though he did not consider himself a Murji'ite), the jurist Abu Hanifa, founder of the school of law bearing his name and others. It is outside the scope of this study to discuss the origins of the idea of *irja* and its theological implications, since our concern is mainly to discuss the relevance to the doctrine of *irja* to one of the main questions of the day—whether the destiny of man was to be decided on the scale of political justice or by other moral or religious standards.³¹ The significance of the Murji'ite movement as a whole may be summarized as follows: First, its emphasis on the idea that political justice was not necessarily the determining factor from an almost exclusively political angle to other aspects. It provided the ground for the rise of other schools which discussed justice from different perspectives.³²

Rigorousness

The Umayyad authorities, considering *qadar* as a doctrine opposed to their scale of political justice, were not prepared to tolerate subjects, whether in Orthodox (Sunni) or heterodox circles, who expressed views in favour of *qadar*. It was taken for granted that heterodox groups—Kharijites, Shi'ites and others—sought, by upholding the Qadarite notion of voluntarism (*ikhtiyar*), to undermine the position of the Umayyad caliphs by holding them responsible for the injustices committed under their regime. But the acceptance of Qadarite notions by the adherents of Orthodoxy aroused the concern of

the authorities on the grounds that qadar was opposed to jabr, the official doctrine of the Umayyad Imamate, even though Sunni Qadarities may have been on good terms with authorities. For this reason, the authorities often censored the activities of Sunni Qadarites and entered into debate with some on theological questions which may not have direct bearing on political justice. The caliphs 'Abd al-Malik B. Marwan (d. 86/705) and 'Umar B. Abd al-Aziz (d. 101/720) seem to have exchanged letters with men reputed to have held or entertained Qadarite ideas. The authorship of those letters has been questioned by modern scholarship on the grounds that they were either interpolated or composed by later writers, although the subject-matter was quite relevant to the theological controversies in which their authors have been involved.³³

The first letter, sent by order of the Caliph Abd al-Malik to al-Hasan al-Basri, is more directly concerned with qadar and political justice. The name of Abu Sa'id al-Hasan al-Basri (21/642-11-/728), an almost legendary figure known for piety and uprightness, was reported to the authorities as having expressed seemingly unorthodox views in favour of qadar.³⁴ Respected by many political leaders and on good terms with the authorities, he is reputed to have spoken his mind openly at the great Mosque of Basra, where he met with his disciples and discussed moral and religious questions that had political applications. He was claimed by rival theologians to have been the fountain of their conflicting views, as each tried to influence opinion by invoking the authority of a man held in high esteem. The Caliph Abd al-Malik was naturally interested to find out where al-Hasan stood in the controversy between the Jabarites and the Qadarites, since southern Iraq, where he was preaching his doctrines, was the center of active heterodox activities, and rival political leaders might have derived support from his teachings in favour of their political doctrines.

Was Abu Sa'id al-Hasan a Qadarite or a Jabarite? Were his views in favour of Umayyad legitimacy and political justice or their opponents?

Al-Hasan's ideas, orally transmitted, have often been cited by some in favour of *qadar* and by others in favour of *jabr*, but no work epistle attributed to him and reputed to have been an answer to a letter from the Caliph Abd al-Malik, has come to light in recent years, although references to it may be found in several works without a clear indication of al-Hasan's stand on *qadar* and *jabr*. From this exchange of letters, even though its authenticity is not without doubt, we are able to know at least the general trend of his thought, especially concerning justice. However, his views about voluntarism and involuntarism are not, strictly speaking, stated with clear commitment to either one, perhaps either because he held independent views or because he was *persona grata* to the authorities and did not want to appear opposed to the doctrine of *jabr*. Nor was he in favour of the notion of *qadar* as expressed by some of the heterodox opponents to the Umayyad regime on political grounds.³⁵

In his Epistle, al-Hasan appears to have taken an independent position on *jabr* and *qadar*. He did not say that all human acts were the product of free will. Nor did he speak of evil and unjust acts as predicated by God in the same terms as expressed by the advocates of *jabr*. Moreover, his views about *qadar* were derived not from Reason, as the Qadarites maintained, but from the Revelation, such as the following:

Say: God does not command indecency; what do you say concerning God such things as you do not know? Say: God commands justice. (Q VII, 27-28)

To whoever of you desires to go forward or lag behind, every soul shall be pledged for what it has acquired. (Q. LXXIV, 40)

God charges no soul save to its capacity; standing to its account is what it has acquired, and against its account what it has merited. (Q. II. 286).

From these texts, *al-Hasan* concluded, God has not created all human acts—He commanded men only to do good in accordance with justice and prohibited indecency and in-

justice. Unwilling to commit himself to the doctrine of qadar of God," in which the destiny of man was described as having been generally dependent on God put specific acts involving moral and religious responsibility were considered the product of man's free will. "Guidance flows from God," he said, "but wrong-doing comes from man."³⁶ In these terse words, he summarized his notions of qadar an jabr in a nutshell. God commands mankind as a whole, he said, and every man is expected to obey. But each man is personally responsible for all acts involving wrong-doing. It is hardly necessary to say that the doctrine of "the qadar of God" is neither equivalent to the doctrine of complete voluntarism, nor involuntarism, since he disclaimed the view of the qadar of God as a determinative factor of acts for which men are held responsible. In other words, he accepted some aspects of qadar, rendering man responsible for injustice, but he did not reject jabr without reservations.

However, al-Hasan warned the Qadarites about free will, as they seem to have taken the duties prescribed in the Qur'an lightly. He denounced the extremists, in harsh words as "the ignorants," "the wrong-doers," and "the misleaders," and condemned their views as false and their acts of violence as tyranny. Their acts, he said, were not acts prescribed by God. This was his answer to all the opponents of the authorities—Kharijite, shi-ite, and others—who questioned the Sunni claim to legitimacy, and he in no uncertain terms supported their standard of political justice and affirmed his loyalty to the Umayyad House.

Hasan al-Basri, essentially pious and moralist by nature, tried to draw a line between political and ethical justice. He equated the latter with righteousness and conformity to Law and Religion. Opposed to violence, he asserted order and quietude. His teachings were in favour of the status quo; but his support of the established authority was unquestionably justified in accordance with the Revelation which states: "Obey God and the Apostle and those in authority among you" (Q. IV, 62). However, his concept of political justice, though bordering on jabr, was not without qualifications, since he urged

the authorities in no uncertain terms to pursue justice and warned against oppression and injustice. For this reason, he did not consider himself a Murji'ite, although he came very near to sharing their views and accepted tacitly the doctrine of the suspension of judgement. Small wonder that several scholars claimed to have received inspiration from his teachings and ascribed to him ideas that they put forth and circulated.

Some of the Qadarites seem to have been in touch with al-Hasan, although they held a notion of *qadar* entirely different from his which brought them into conflict with the authorities. Perhaps some of the most outspoken, reputed to have been the earliest Qadarites, were Mabad al-Juhani (d. 80/699) and Ghaylan al-Dimashqi (d. 125/743). Mabad had indeed attended al-Hasan's circle at the Basra Mosque, but Ghaylan, a disciple of Mabad, had only indirectly known al-Hasan. Little is known about Mabad's life; he seems to have held some broad notions of *qadar*, though his views were on the whole moderate (perhaps under the influence of al-Hasan). Ghaylan, however, held extreme views, especially about political justice, which were almost as revolutionary as Khariji doctrines. For instance, he asserted, with the Kharijites, that the legitimacy of the Imamate should not be dependent on the Qurayshi qualifications, as God's Sovereign Will can be exercised by any believer worthy of the office without distinction. But he disagreed with the Kharijites on the question of rituals as a necessary part of "iman" (inward belief).³⁷ Both he and Mabad were put to death for political and conspiratorial activities (the first in 80/699 under the Caliph 'abd al-Malik and the other in 125/743 under the Caliph Hisham), although the reason given for their execution was their qadarite views.³⁸

If Mabad and Ghaylan were forerunners of the doctrine of *qadar*, Jaham B. Safwan (d. 128/746) was perhaps the first to express extreme and abstract views about *jabr*. Both Mabad and Jaham shared al-Hasan's views by making a distinction between political justice and other aspects of justice, and they seem to have been interested not in political but in theologi-

cal and ethical questions. Jahm preceded the *Mu'tazilites* in advocating the doctrine that God possesses no attributes other than Oneness and Omnipotence, which distinguish Him from mankind. God, said Jahm, is unique—"nothing can be like him," as He is described in the Revelation (Q.XLII, 9). In accordance with this doctrine, Jahm argued that everything, including the Quranic Revelation (considered written in God's won words), was created by God. The idea that the Qur'an was created, advocated later by the *Mu'tazilites*, was perhaps the only one he held in common with the *Qadarites*, for he was adamantly opposed to voluntarism and maintained that the *Qadarite* position on the question of free will and human responsibility qualifies God's attribute of Omnipotence. Nor was Jahm interested in the notion of justice, for in a world dominated by God's Will the concept of justice is irrelevant and his preoccupation with God's absolute power and unique qualities diverted his thought from man to God.³⁹ Small wonder that Jahm was denounced by the advocates of both *qadar* and *jabr*, who were primarily concerned with political justice, although long after his death there was an increasing interest in his ideas when the *Hanbalites* and other advocates of *jabr* stood in opposition to *Qadarites* and attacked his ideas to discredit the *Mu'tazilites* for holding identical views with Jahm.⁴⁰

Retribution

Moderate in temper and constantly calling for peace and tranquility, al-Hasan displayed tolerance even to iconoclasts toward the end of his life. Like the *Murji'ites*, he was prepared to postpone judgement on questions of political justice to the hereafter. But his views aroused criticism from among some of his disciples who held either *Qadarite* or *Jabarite* views, although most of his followers remained loyal to him out of deference to his seniority, integrity, and reputation of piety.

The disciple who more openly disagreed with al-Hasan, especially on questions of political justice, was Wasil B. Ata (80/699-131/749), who seceded to form a dissident group and became a forerunner of *Mu'tazilite* thought. Born in

Madinea, Wasil came under the influence of some of the descendants of the Caliph Ali, especially Abd-Allah B. Muhammad B. al-Hanafiya (an offspring from Ali's second wife), before he left Madina for Basra and sat at the feet of al-Hasan al-Basri. Though he was at the outset a loyal disciple of al-Hasan, Wasil attended other circles and participated in discourses with such Men as Ma bad al-Juhani, Jahm B. Safwan, and others who held conflicting theological views. He also became closely associated with Amr B. Ubayd, another disciple of al-Hasan, and married his sister.⁴¹

Under the influence of these diverse streams of thought, Wasil was not unnaturally inclined to develop views about justice and qadar, not altogether in agreement with al-Hasan's line of thought. Like al-Hasan, he equated justice with righteousness, but his scale of justice differed considerably from that of his master. On good terms with the authorities, al-Hasan took a position almost identical to the Murji'ites and refused to be drawn into a debate on political justice; but Wasil, though rejecting *Khariji* revolutionary doctrines, showed an interest in political justice and shared some of their ideas about it. He held that the believer who denounces allegiance to the Imam must bear a certain measure of responsibility.⁴² To the *Kharijites*, the believer who denounced allegiance to the Imam was considered to have committed a grave sin (*al-kabira*) and was equated with the unbelievers. But Wasil, taking a middle position between *Kharijites* and *Murji'tes*, developed his own doctrine of the intermediate position (*al-manzila bayn al-manzilatayn*); therefore, he disagreed with both as well as with his master. He maintained that the believer who denounced allegiance to the Imam was neither an unbeliever nor entirely innocent of infidelity (*kufr*), and assigned for him an intermediate position which he called "*fasiq*" —an impious who commits a venial sin. He would be liable for certain punishment, he asserted, but should not be denounced as an unbeliever.⁴³

A traditional story about how master and disciple were separated might not be out of place, as it reveals certain intellectual concern among those who felt that the Murji'te posi-

tion on political justice disguised hypocrisy under the guise of the doctrine of *irfa*. Wasil, it is said, arrived with his brother-in-law Amr B. Ubayd at al-Hasan's circle one day and, having taken his usual place, put forth a question to his master on the destiny of the grave sinner. Before waiting for al-Hasan's reply, Wasil volunteered his own answer by saying that the so-called grave sinner should be considered in an intermediate position. Wasil then abruptly moved to another pillar of the Mosque, followed by Amr B. Ubayd, to form his own circle. Al-Hasan reportedly remarked that Wasil "separated himself" (*i'tazal*) from us (al-Hasan's circle)—a remark which earned Wasil and his new followers the nickname of "al-Mutazile" later to be applied to a new school of thought, claiming Wasil as its founder.⁴⁴

The story of Wasil's separation from his master must be taken as symbolic and not necessarily as a historic event. For the form in which it was reported indicated that a sudden break had taken place between Wasil and his master, whereas in reality the debate on political justice had been going on uninterrupted for a long time in several circles, including al-Hasan's, and the question of the punishment of the *fasiq* must have been discussed and resolved in Wasil's mind (and perhaps in the minds of several others) in accordance with the dictum of "the intermediate position" long before Wasil suddenly brought it up before his master in a confrontational manner. Wasil's sudden move to another pillar is indicative of his desire to form a circle of his own which would make public its stand for retribution against those who failed to express an opinion on a question in flagrant violation of political justice. It was known that al-Hasan himself had denounced those who refused to express an opinion on the question of grave sin as hypocrites.⁴⁵ If a believer were a hypocrite, it was then asked, should he be forgiven without blame? The Kharijites, who insisted that the grave sinner was an unbeliever (*kafir*), cited a Tradition from the Prophet to the effect that the hypocrite was indeed a grave sinner. The Tradition runs as follows: "There are four features which give a man the stamp of a hypocrite: when he promise, he fails to fulfill his promise; and when he litigates, he is dishonest."⁴⁶

On the strength of this Tradition the Kharijites argues that a hypocrite was one who possessed an immoral character and therefore had no faith, but only hypocritical belief.⁴⁷ Since al-Hasan failed to express an opinion on the destiny of the grave sinner, Wasil and other disciples declared their separation from his circle and made public their own position on that question.

What prompted Wasil to take a firm stand on the question of the grave sinner and not merely to brand him as a hypocrite was the notion of retributive justice, which was overlooked by al-Hasan. By failure to pronounce judgement on the matter, al-Hasan and the Murji'ites appeared in Wasil's eyes to have relieved the fasiz from responsibility and to have set a principle of political justice aside; consequently, the spirit of the Revelation and the Law were under mined.

The significance of Wasil's contribution to the debate on justice is that he called attention to an important aspect of justice—retributive justice—which had been inadvertently ingored by his master and the Murji'ites. Perhaps no less important, he offered a more convincing solution for a question of political justice than his contemporaries and thus prepared the ground for the scholars of the generation that followed him for a more thorough examination of the whole meaning of justice than where he and others had left it. Since Wasil's doctrine of "the intermediate position" was later adopted by the Rationalist Mutazila as one of their basic principles, he deserves indeed more credit than had yet been accorded to him by modern writers.⁴⁸

Conspiracy Against Sovereign Power

Fear of death at the hands of an assassin is as old as the institution of monarchy itself. A sovereign had many enemies, and he had to be always alert, lest in a moment of complacency, he was done to death by an unseen dagger. Like their predecessors, the Rajput rulers of Delhi and Ajmer, the sultans of Delhi had to be constantly on their guard against the assassin's fatal knife. Since there was no fixed law of succession to the imperial throne, any person of some worth

could aspire to mount it and establish a dynasty and captured the throne for themselves, even though only for a brief period. A conspiracy to murder or overthrow the sovereign was, therefore, looked upon with great concern and the offenders were severely dealt with. Desertion, fleeing to the enemy's side, corresponding with or spying for him, were all serious crimes meriting death.

Failure to perform one's military duty on the battlefield with success was punished by Sultan Ghiyasuddin Balban with death. In a like manner, praising a rebel or blessing him for success invited capital punishment under Sultan Muhammad bin Tughluq. An exile to Ghazni, on his return to the capital without prior imperial permission, was considered by the same Sultan to have committed a crime serious enough to merit death. Sultan Muhammad also inflicted severe punishments upon persons, irrespective of their ranks, for interfering with the work of imperial servants on duty.

Cases of Conspiracy and Attempt on the Life of the Sovereign Under Sultan Iltutmish

The Sultan used to go to his Friday prayer at the Jami Masjid. Taking advantage of this fact, the heretics of Delhi, who considered him a patron of orthodoxy, plotted to kill him in the mosque. One Friday, a number of them, fully armed, flocked into the mosque, drew their swords and attempted to reach the spot where the Sultan was sitting, and killed several men in so doing. The Sultan escaped unhurt, and the Muslim devotees soon surrounded and with arrows, bricks, stone chips, sticks and other handy material killed them all.⁴⁹

Under Sultan Mu'izzuddin Bahram

On his accession, Bahram Shah had appointed Badruddin Sunqur Rumi his *amir-i-hajib*, but the latter did not prove true to his salt and organized a conspiracy against his master. On 27 August 1241, he called a secret meeting at the residence of the *muhtarif-i-mamalik*, Sadru'l Mulk Saiyid Tajuddin 'Ali Musawi, to which were invited, among others, the *Qazi-i-mamalik*, Jalaluddin Kashani, Qazi Kabiruddin and Shaikh Muhammad

Shami. The conspirators decided to make the *wazir*, Nizamul Mulk Muhazzabuddin, also a party to their plot. For this purpose, Tajuddin Ali Musawi was sent to Nizamul Mulk. When Tajuddin called on the *wazir*, the latter hid a confidant of the Sultan behind a curtain. When the visitor reported the purpose of his coming, the *wazir* outwardly welcomed the scheme, but no sooner had Tajuddin Ali Musawi departed than the Sultan was intimated of the plot. Without losing any time he had all the conspirators rounded up; he, however, did not inflict any severe punishment on them. The *amir-i-hajib* was sent to govern Badayun; the *Qazi-i-mamalik* was dismissed Qazi Kabiruddin and Shaikh Muhammad Shami left the capital on thier own.⁵⁰

Under Sultan Jalauddin Firoz Khilji

In the conspiracy to murder Sultan Jalauddin and place Saiyidi Maula on the throne, it had been allegedly arranged that Kotwal Birinjan and Hatia Paik would do the killing, when the Sultan went to offer his Friday prayer at the Jami Masjid. The plot, through the desertion of one of the conspirators, having failed to materialize, the Sultan had all the suspects arrested. During the probe into the conspiracy, it was found that, had everyting proceeded according to plan, Brinjan and Hatia Paik would have performed the assassination of the Sultan. They were therefore, ordered to be put to death.⁵¹

Under Sultan Alauddin Khilji

In early 1301, while marching out of Delhi at the head of his army to conquer Ranthambhor, Sultan Alauddin Khilji halted for a few days at Tilpat⁵² to enjoy his favourite recreation, the chase. These, one day, his brother's son, Ikit Khan⁵³, finding him alone during the chase, made an unsuccessful attempt to murder him. He was seriously wounded, but escaped a sure death by the timely arrival of his horsemen. Ikit Khan tried to flee, but was hotely pursued, captured and beheaded⁵⁴.

There were more than ten thousand New Muslims (Mongols converted to Islam) in Delhi during Sultan Alauddin's

reign. Some of their leaders had been unemployed for years, while others' salaries, *in ams* and certain other privileges had been curtailed. They, therefore, decided to take revenge on the Sultan for their misery and hatched a plot for his purpose. Since the Sultan often came out to fly his hawks wearing only a cloak of one cloth and the persons with him were not armed, the conspirators hoped that two or three hundred Mongol horsemen would be sufficient to kill him and his entourage and establish a government of New Muslims and their Indian followers. However, the plot was discovered timely by the Sultan's agents, and he issued a secret order to his officers that all the New Muslims in the empire, "who held jagirs", were to be put to death on a particular day. Some twenty to thirty thousand new Muslims, most of whom were completely ignorant of the conspiracy against the life of the Sultan, were thus done to death and their women and children reduced to beggary⁵⁵.

Under Sultan Qutbuddin Mubarak Khilji

While the Sultan was returning to Delhi after his successful campaign against Harpal Deva of Devagiri (1317), Malik Asaduddin, son of Yaghrush Khan, the youngest brother of Sultan Jalauddin Khilji, planned to assassinate him and capture the throne for himself. Qutbuddin Mubarak was to be murdered near Ghati Sagun. Fortunately, one member of the conspiracy, Aram Shah, revealed the plot to the Sultan, who halted the march. Malik Asaduddin, Malik Khajuri, Malik Misri and number of other conspirators were arrested during the night; they were forced to confess their guilt and were beheaded the next morning before the royal pavilion. The executions of Asaduddin and his associates did not satisfy the Sultan, who determined to punish the whole family of Yaghrush Khan. Twenty-nine children, descended from Yeghrush, who were not old enough to come out of their houses, were seized in Delhi and killed in cold blood. The entire effect of Yaghrush was confiscated, and the women of his harem were left to beg from door to door.⁵⁶

Under Sultan Firoz Tughluq

In 1358, a plot was hatched against the life of Sultan Firoz

Tughluq. His cousin, Khudawand Zada and her husband arranged that the Sultan should be murdered by armed men on the occasion of his weekly visit to her house.⁵⁷ The plot was, however, frustrated by her son, Dawar Malik, who was not in sympathy with his step-father, Khusrau Khan, and who contrived to apprise the Sultan by signs that his life was in danger, thus causing him to depart sooner than was his wont. On returning to his palace, Firoz sent troops to surround Khudawand Zada's house, and the men, who were to have him slain him, were arrested and forced into confessing the conspiracy. Khudawand Zada was imprisoned, her husband was banished and her great wealth confiscated.

Under Sultan Abu Bakr Tughluq

When Abu Bakr, grandson of Sultan Firoz Tughluq, captured the throne in 1389, he appointed Malik Rukhnuddin his *wazir*. Soon the *wazir* conspired to assassinate the Sultan and usurp the throne for himself. Abu Bakr, having timely been informed of the plot, ordered the ungrateful *wazir* and his household troops, involved in the murder scheme, to be put to death⁵⁸.

Under Sultan Sikandar Lodi

While Sikandar Lodi was staying at Sambhal (1499-1504), some discontented elements joined hands to organize a coup. Twenty-two nobles, operating in different parts of the empire, planned to depose the Sultan and raise his younger brother, Fath Khan, to the throne. The prince, however, divulged the secret to his mother and also to his spiritual master, Shaikh Tahir. The Shaikh advised the prince to report the matter to his imperial brother, so that he may be absolved from complicity in the plot. The conspiracy having failed, the Sultan expelled all the twenty-two nobles from his empire.⁵⁹

Cases of Treachery, Betrayal and Desertion

Under Sultan Alauddin Khilji

No sooner had Sultan Alauddin Khilji established himself on the throne of Delhi than the *maliks* of the late Sultan, who had deserted their benefactor and joined him and re-

ceived gold by *mans* and obtained employments and territories, were seized and imprisoned. Then some were killed and others blinded. The wealth, which they had received from Alaaddin, as well as their own property, goods and effects, were confiscated. Nothing was left to their children; their retainers and followers were taken in charge by the *amirs*, who supported the new regime, and their establishments were overthrown.⁶⁰

During the siege of Ranthambhor, Ranmal, the *wazir* or Raja Hamira Deva, came over to the Sultan with a strong party. After Ranthambhor was captured, Sultan 'Alaaddin ordered to put Ranmal and his followers to death saying, "Those who betray their natural masters will never be true to another."⁶¹

When Malik Kafur was sent to reduce Ma'bar, Sultan Alaaddin had attached to him five officers, whose duty it was to go forward and collect news about the enemy. On arrival of the imperial forces on the border of Ma'bar, one of those officers, a New Muslim, Aboji, secretly decided to join the Ma'bari side.

Cases of Treachery, Betrayal and Desertion

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Under Sultan Muhammad bin Tughluq

Once the Sultan detailed a division of the army under the charge of Malik Yusuf Bughra to fight the infidels in the hills bordering the Delhi province. Yusuf marched and was attended by most of his troops; but some of them stayed behind. Yusuf intimated the Sultan of the fact, who ordered a search to be instituted round the city and capture as many of those, who had stayed behind, as might be traced. His orders were carried out and three hundred and fifty of the deserters were rounded up. The Sultan had all of them executed.⁶⁵

Under Sultan Firoz Tughluq

During the second March upon Thatta (1363) many of Firoz Shah's men, who had gone through the hardship of the first campaign, secretly left the army and went back to Delhi. On being apprised of this situation, the Sultan issued orders to *Khan-i-Jahan* at Delhi to apprehend the deserters from Thatta. The Khan was directed not to subject the deserters to *tadaruk-ikhusravi*, which signified execution, banishment or amercement, but to *tadaruk-imanawi*, or moral remedy, which implied that they were to be exposed to public reproach. In obedience to the Sultan's instructions, *Khan-i-Jahan* Maqbul directed his officers to apprehend everyone who had deserted

the army. All those apprehended in Delhi, and found to have fled from Thatta, were subjected to public gaze for a day two and then set free.⁶⁶

Under Sultan Bahlul Lodi

Darya Khan Lodi, governor of Sambhal, had transferred his loyalty to Sultan Mahmud Sharqi, when the latter marched with his troops to wrest Delhi from Bahlul Lodi in 1452. On the battlefield, however, he left the Sharqi ruler and returned to Bahlul's camp. After his victory over the Sharqi invader, Bahlul Lodi reduced Darya Khan's *iqta* by seven *parganas*, but did not remove him from Sambhal for his disloyalty.⁶⁷

Cases of Disobedience Under Sultan Muizzuddin Bahram

After Badruddin Sunqur Rumi's conspiracy to overthrow his master, with the help of a number of other high-ranking imperial servants, had failed in Delhi, the Sultan, taking a light view of his crime, had sent him to govern Badayun. Treating the Sultan's leniency towards him as a sign of weakness, Badruddin returned to the capital barely four months after his appointment, without imperial permission to that effect. The Sultan, realizing that his clemency had been misinterpreted for weakness, got Badruddin arrested as soon as he reached Delhi, threw him into prison and, after some time, ordered him to be put to death.⁶⁸

Under Sultan Muhammad bin Tughluq

Ali Shah Nathu, who was *mugta* of Kohir and a military officer directly subordinate to Qutluq Khan, governor of Daulatabad, found a plea for revolt in the latter's pro-Hindu policy, Qutluq Khan having favoured Bhiran Rai, the Hindu administrator of Gulbarga with the *iqta* of Kohir. He collected a force, marched against, and killed Bhiran Rai and established his hold over Gulbarga and Bidar. He then declared his independence and proclaimed himself king under the title of Sultan 'Aluddin. The Sultan ordered Qutluq Khan to deal with him (1340). Ali Shah was defeated and taken prisoner. The Sultan exiled him and his brothers to Ghazni, but when they returned to Delhi without imperial permission, they were executed.⁶⁹

Under Sultan Sikandar Lodi

In 1510, Miyan Sulaiman Farmuli, son of Khan-i-Khanan Farmuli, was ordered to proceed to Uditnagar to help Husain Khan, a Hindu convert, who held the territory of Shivpur, but he refused to go there. Annoyed at his disobedience, the Sultan deprived him of his high position and ordered him to be away from the royal camp with all his baggage before the following morning, as the soldiers were permitted to plunder his property, if he were late. The *pargana* of Indari was assigned to him for his maintenance.⁷⁰

Under Sultan Ibrahim Lodi

While Sikandar had often overlooked conspiracies against himself, his son, Ibrahim Lodi, punished even suspected neglect of duty with imprisonment and torture. Soon after he came to the throne, he cast into prison Miyan Bhua, the tallest of the nobles at his court, simply because the latter did not implicitly carry out the Sultan's capricious orders and was careless about forms.⁷¹

Case of Assaulting Imperial Servant on Duty under Sultan Muhammad bin Tughluq

Amir Saifuddin Ghaddan, an Arab, came to India during the reign of Sultan Muhammad bin Tughluq and was warmly received at the imperial court. The Sultan not only bestowed upon him many riches but also gave his sister, Firoz Khunda, in marriage to him.

Twenty days after the marriage, Amir Saifuddin happened to come to the royal palace which he desired to enter but, since he had no previous appointment with the Sultan, the head *usher* denied his admission. Flying into rage, he started beating the *usher* with a stick that lay there, until the latter bled. The wounded *usher* went up to the Sultan with his blood-stained clothes and told him about what Saifuddin had done. The Sultan reflected for a while and then said, "The *qazi* will decide the case between you."

Qazi Kamaluddin was then in the council-hall. Sultan ordered Malik Tatar to take both the parties to him. In the

qazi's court, Amir Saifuddin admitted that he had beaten the usher. The *qazi*, in consequence, ordered him to be imprisoned for the night. Saifuddin spent the night like and ordinary prisoner; Firoz Khunda sent him no bedding to sleep on, nor did she inquire after him for fear of the Sultan.⁷²

Case of Praising a Rebel under Sultan Muhammad bin Tughluq

Shaikh Shamsuddin, son of Tajul Arifin, was an inhabitant of the city of Koil. He had devoted himself exclusively to worship.

It so happened that one of the *amirs* in a certain province revolted against the Sultan and the people swore allegiance to him. It was reported to the Sultan that the rebel was mentioned before Shaikh, Shamsuddin, who praised him and added that he was fit for kingship. The Sultan got the Shaikh, his sons, as well as the *qazi* and the *muhtasib* of Koil arrested and presented in chains at the court. The *qazi* and the *muhtasib* were alleged to have been present in the assembly in which Shaikh Shamsuddin had eulogized the rebellious *amir*. The Sultan threw them all into prison after having blinded the *qazi* and the *muhtasib*. The Shaikh died in prison.⁷³

Case of Refuting the Sovereign's Views Under Sultan Muhammad bin Tughluq

One day the Sultan summoned the *ulama* to a formal meeting in which he questioned about the position of the holy Prophet as the last of the Messengers of God, saying: "Reason does not accept the possibility of the termination of prophethood in the same way as it does not accept the possibility of the termination of *wilayat* (spiritual succession to the holy Prophet)".

On hearing this the *ulama* were struck dumb: they suggested that the Sultan seek the advice of Shaikh Shihabuddin, who was the most accomplished of the sufi saints of Delhi. The Sultan sent for him and repeated his question when he appeared at the court. No sooner had the Sultan finished than the Shaikh took off his shoe and struck it on the face of the Sultan. Muhammad bin Tughluq retaliated by ordering

that the Shaikh be thrown from the height of the royal fort into the ditch below. This was done but the saint did not die. He was thrown a second time and, when need arose, a third time, when he passed away.⁷⁴

Case of Blessing a Rebel

Under Sultan Muhammad bin Tughluq

When Qazi Jalal Afghani and his tribe revolted against Sultan Muhammad in Cambay, Shaikh Ali Haidari, an inhabitant of that city and of great fame for piety, was reported to have wished for his success by giving him the cap he was wearing. It was even alleged that the saint had sworn him allegiance. After Qazi Jalal's rebellion had been put down, Shaikh Haidari was produced before the Sultan, who ordered that his head be cut off.⁷⁵

Cases of Neglect of Duty

Under Sultan Iltutmish

Malik 'Izzuddin Tughril Tughan Khan, who was the Sultan's *sar-dawatdar*, through carelessness, lost the imperial jewelled-pencase. When the loss was reported to the Sultan, he reprimanded Malik 'Izzuddin for his irresponsible conduct, but did not remove him from office. The Malik was asked to be more careful in future in discharging his duty.⁷⁶

Under Sultan Ghiyasuddin Balban

Malik Baqbaq, governor of Badayun, in a state of drunkenness, had beaten an attendant to death. The murder was discovered when the Sultan was touring the province. The provincial *barid* (official newswriter), who had failed to report the tragedy to the Sultan on time, was charged with criminal neglect to duty and ordered to be hanged on the city gate.⁷⁷

When news of Malik Tughril's revolt first reached Sultan Balban, he at once sent Amin Khan, governor of Awadh, to bring the rebel to his senses. Malik Tughril brought up his forces and opposed Amin Khan's progress. In the battle that followed near the Gogra (also known as the Sarju) in North Bihar, Amin Khan's troops were defeated; some of them then

deserted to Tughril, while the rest, retreating, suffered heavy losses at the hands of the militant Hindu tribes of Awadh. The Sultan was enraged at the poor performance of Amin Khan; he issued orders that the Khan be killed and his body gibbeted at the gate of Awadh.⁷⁸

After Amin Khan's discomfiture at the hands of Mailik Tughril and his retreat to Awadh, Balban fitted out and sent another army under Malik Tarmati to deal with the rebel. Malik Tughril attacked Tarmati unawares, inflicting on him a crushing defeat and forcing him to beat a retreat. On his return to Awadh, Malik Tarmati met the same fate as his predecessor had. The Sultan ordered Malik Shihabuddin to hang him on the gibbet, before leading the third campaign against Tughril. Malik Tarmati was hanged.⁷⁹

Under Sultan Muhammad bin Tughluq

Sultan Muhammad had put the head orator (*khatib-ul-khutaba*) of Delhi in charge of the treasure of precious stones during a march. It so happened that one night robbers fell upon the convoy carrying the treasure and looted with a criminal neglect of duty and ordered for his execution by beating.⁸⁰

Under Sultan Firoz Tughluq

In 1365, Firoz Tughluq marched from Delhi at the head of a large army to conquer Thatta. He, however, failed in his project and was forced to retreat to Gujarat. On his return journey, several thousand of his troops and beasts of burden perished in the Runn of Kutchh out of hunger and thirst. Before leaving the capital for Thatta, the Sultan had sent word to Malik-us-Sharq Nizamul Mulk Amir Husain, governor of Gujarat, to send reinforcements and food supplies to the imperial camp at Thatta. But to his dismay no supplies or reinforcement arrived from the governor. When the Sultan reached the provincial headquarters of Gujarat, he immediately dismissed Nizamul Mulk from office for his sheer callousness and neglect of duty.⁸¹

Under Sultan Sikandar Lodi

In 1507, Jalal Khan Lodi, who held the *iqta* of Kalpi, was

sent to reduce the fort of Narore. As he did not exert himself properly, the siege prolonged for a whole year. The Sultan recalled and threw him into prison for neglect of duty.⁸²

References

1. See Aristotle, *Politics*, 1233^a 37; and the *Nicomachean Ethics*, 1134^a 32.
2. For a study of the relationship between legal justice and political objectives, see Otto Kirchheimer, *Political Justice* (Princeton, 1961); of. William Godwin, *Political Justice*, ed. H. S. Salt (London, 1890; 2nd ed., 1918), for the view that political justice is an expression of social ideals.
3. For further citations about entrusting divine power to the Prophet Muhammad. see Q. IV, 62; V, 39 and 119; IX, 115 XII, 100; XX, 113; XXXVIII, 25.
4. See Baydawi's *Tafsir* (Commentaries) (Cairo, 1951), p. 601.
5. Although it was universally accepted that the Prophet was just, the question on the matter was once put to him and he answered, in no uncertain terms, that justice was always his aim. A case in point is illustrated by the following: "One day we were with the A postle, who was distributing shares, when Dhu al-Khuwaysira, a man from the tribe of Tamin, came up to him and said, 'O Apostle, distribute in your tongue,' and the Apostel replied, 'Who would be just, if not I? I would be a poor thing if I were not just' (Muslim, *Sahih*, under "Zakar," trad. 148).
6. "No, my Lord, they do not believe until they make three judge in their disputes and do not afterwards find difficulty in the decisions, but surrender in full submission" (Q. IV, 78). This Revelation, we are told, was communicated in connection with a case in which the Prophet exercised equity to correct a ruling in accordance with justice. See M. Khadduri, *Islamic Jurisprudence* (Baltimore, 1961), pp. 114-15, n. 9.
7. A few men, and one women, claimed prophecy after Muhammad's death, but none could persuade the community of believers to accept him (or her), and very soon they all vanished. The precedent was established that the Quranic injunction 'seal of the prophets' (Q. XXXIII, 40), meant that Muhammad was the last of the prophets (see Baydawi, *op cit.*, p. 559).
8. The text of the Tradition runs as follows: "Whoever recognizes me as his master (mawla)," said the Prophet, "will know Ali as his master." It is said that the Prophet made this declaration at Ghadir Khum, on the way to Madina, after he returned from Makka on the occasion at Ghadir Khum, on the way to Madina, after he returned from Makka on the occasion of his farewell pilgrimage (10/632). Perhaps the car-

liest authority who gave an account of the event is al-Ya' Qubi, himself a follower of Ali (d. 277/891), in his *History*, ed. Houtsma (Leyden, 1883); text of the Tradition is reported in Ibn Hanbal's *Musnad*, ed. Shakir (Cairo, 1949), II, 644, 951, 963-64, 1310.

9. The Sunni Tradition is based on the precedent of the election of Abu Bakr as first caliph in 10/632 (see Ibn Hanbal, *al-Musnad*, I, 323-27).
10. The Imam's power of tawil can virtually lead in effect to the exercise of the power of legislating.
11. For an exposition of the Shi'i doctrine of the Imamate, see Shaykh Saduq, *Risalat al-Ijtihadat*, trans. A.A.A. Fyzee, entitled a *Shiite Creed* (London, 1942); Qadi al-Numan B. Muhammad, *Da' a' Hili al-Babu I Hadi Ashar*, trans. Miller (London, 1928), pp. 62-81. For modern studies, see D. M. Donaldson, *Shiite Religion* (London, 1933); A.A.A. Fyzee, "Shi'i Legal Theories," in Khadduri and Liebesay, eds., *Law in the Middle East* (Washington, D.C. 1955), chap. 5.
12. For the doctrine of the ijma as an expression of the Divine Will, see Shafi'i, *al-Risala*, trans. Khadduri, *Islamic Jurisprudence*, p. 38.
13. Al-Hasan, Ali's first son, was in theory the titular Imam, although he surrendered his powers to Muawiya, founder of the Umayyad line of caliphs. Upon Hasan's death (49/669), al Husayn became the third Imam.
14. The doctrine of Ghayba and the return of the Imam as al-Mahdi prevails in the region of the Persian Gulf (in Iran and Iraq in particular), but there exist several other Shi'i sub-divisions, like the Zaydis in the Yaman, where the Imamate survived to the middle of the present century. Smaller Shi'i communities may be found in the Levant coast (Syria and Lebanon) and still others, whose spiritual head is the Agha Khan, are scattered in East Africa and the Indian sub-continent. For a brief account of Shi'i subdivisions, see Henri Lamens, *Islam: Beliefs and Institutions*, trans. Denison Ross (London, 1929).
15. Ash'ari, *Maqalat*, I, 191.
16. Hisham al-Fuwati, another radical leader, shared the opinion of Najdat and held that God alone is the Sovereign and no man should exercise a power on behalf of God (see Ash'ari, *Maqalat*, I, 189-90; and Baghdadi, *Usul al Din*, I, 271).
17. Some radicals, followers of Shabib B. Yazid al-Shaybani (d. 77/697), acknowledged the Imamate of women, provided they were able to discharge public duties. See Baghdadi, *al Farq Bayn Al-Firaq*, ed. Kawthari (Cairo, 1948), pp. 65-66.
18. See chap. 7, section on The Jihad as Just War.
19. For an exposition of Khariji doctrines, see Ash'ari, *Maqalat*, I, 159-69; al-Malati, *al-Tanbih*, pp. 51-57; Baghdadi, *al-Farq Bayn al-Firaq*, pp. 45-67; al-Isfira'ini, *al-Tafsir fi Usul al-Din*, pp. Din, pp. 46-59; Shahrastani, *Kitab al-Milal wa al-Nihal*, pp. 85-108. For modern stud-

- ies, see A.J. Wensinck, *The Muslim Creed* (Cambridge, 1931), chap 3; E. A. Salem, *Political Theory and Institutions of the Khawarij* (Baltimore, 1956); W.M. Watt, *Islamic Philosophy and Theology* (Edinburgh, 1962), pp. 10-19.
20. The Ibadi creed is the official faith in the Sultanate of Oman (Oman) and some of its followers may be found today in North Africa. See T. Lewicki, "al-ibadiyya," *Encyclopaedia of Islam*, new ed. III, 648-60.
 21. For a brief account of the disputations among early Muslim and Christian theologians, see William Thomson, "Al-Ash'ari and His al-Ibanah," *Muslim World*, XXXII (1942).
 22. For a brief account of the meaning and origins of the terms qadar and jabr. see Sharif Ali al-Jurjani, *Kitab al-Ta'rifat*. ed. G. L. Flugel (Leipzig, 1845), pp. 77 and 181; J. Van Ess, "Encyclopaedia of Islam, new ed. pp. 868-72.
 32. For a discussion of the legitimacy of the Imamate under the dynasties that succeeded the Umayyads, see chap. 2. section on Political Justice as the Expression of Divine Will.
 24. See Qadi Abd al-jabbat. *al-Maghani* (Cairo, 1960), VIII, 4. For a discussion of the background and process of arbitration between 'Ali, the fourth caliph, and Mu'awiya, then governor of Syria, see M. Khadduri, *War and Peace in the Law of Islam* (New York, 1979), chap. 20.
 25. For the view that Mu'awiya sought to transform the caliphate into temporal kingship. see al-yaqubi, *Ta'rikh*, ed. Houtsma (Leiden, 1883), II, 176.
 26. This letter is an abridgement taken from an almost full translation from D.C. Dennett, *Marwan Ibn Muhammad: The Passing of the Umayyad Caliphate* (Harvard University. unpublished thesis, 1939), pp. 169-71. I have checked the translation with the original text in the new edition of Abu Ja'far B. Jarir al-Tabari, *Ta'rikh al-Rusul wala-Muluk*, ed. Abu al-Fadl Ibrahim (Cairo, 1965), VII, 218-27. It is said that Ibn Abbas, a great supporter of 'Ali, dispatched to Syria messages to leading Jabarites in which he repudiated umayyad rule as devoid of political justice. See Ibn al-Murtada, *Kitab al-Murayan wa al-amall*. U. 8.
 28. See Ash'ari, *Maqalat*, I, 181; Baghdad, *Usul al-Din*, I, 248-49.
 29. Ash'ari, *Maqalat*, I, 197-98; Baghdad, *al-Farq Bayn al-Firaq*, p. 128.
 30. Ash'ari, *Maqalat*, I, 199.
 31. For a discussion of the origins and meanings of irja. see J. Ess, "Shep-ticism in Islamic Religious Thought," *al-Abbas*, 21 (1968), 1-14; Michael Cook, *Early Muslim Dogma* (London, 1981), chap. 7.
 32. For Murji'ite doctrines, see Ash'ari, *Maqalat*, I, 197-215; Abu al-Husayn al-Malati, *al-Tanbih wa al-Radd* (Cairo, 1949), pp. 139-48; Baghdad, *al-Farq Bayn al-Firaq*, pp. 122-25; Abu al-Muza'ffar al-

- Isfiryani, *al-Tabsir fi al-Din* (Cairo, 1955), pp. 90-91.
33. Michael Cook questions the authenticity of both the letters of Abd al-Malik and Umar, especially the latter, which Van Ess has reproduced from Abu Nu'aym's *Hilyat al-Awliya*, V, 346-53. See J. Van Ess, *Anfänge Muslimischer Theologie* (Beirut, 1977), pp. 113-76 (Arabic text of the letter, pp. 43-54); and Michael Cook, *op. cit.*, pp. 124-36. Umar wrote several other letters on political and theological matters which neither Van Ess nor Cook mention; they may be found in Ibn Abd al-Hakam's *Sirat Umar Ibn Abd al-Aziz*, ed. Ahmad Ubayd (Cairo, 1954), the letter which Van Ess reproduced from Abu Nu'aym (d. 430/1039) is not to be found in the earlier work of Ibn Abd al-Hakam (d. 214/830).
 34. For life of al-Hasan al-Basri, see Abd al-Rahman B. al-Jawzi, *al-Hawasn al-Basri*, ed. al-Sandubi (Cairo, 1931); Ibn Khallikan, *Wafayat al Ayan*, I, 354-57.
 35. For the text of the letters, see H. Ritter, "Studien zur Geschichte der Islamischen Frömmigkeit: Hasan al-Basri," *Der Islam*, XXI (1933), 67-93; Muhammad Umara, ed., *Rasa il al-Adl wa al-Tawbid* (Cairo, 1971), I, 82-93; M. Fakhry, *al-Fikral-Akhlaqi al-Arabi* (Beirut, 1978), I, 20-28. For a critical study of the authenticity and the contents of al-Hasan's Epistle, see Julian Obermann, "Political Theory in Early Islam: Hasan al-Basri's Treatise on Qadar," *Journal of the American Oriental Society*, LV (1935), 138-62; J. Van Ess, *Angänge Muslimischer Theologies*, h. 18ff.; M. Cook, *op. cit.*, p. 117ff.
 36. Hasan's Epistle (Ritter, *op. cit.*, pp. 71 and 79; Umara, *op. cit.*, pp. 86 and 87); Fakhry, *op. cit.*, I, 22.
 37. See Ash'ari, *Maqalat*, I, 200.
 38. Ghylan was interrogated by the jurist al-awaza I (d. 157/774) who gave his verdict in favour of execution on the grounds of qadarite heresy (see *Mahasin al-Masai fi Manaqib al-Imam Abi Amr al-Awazat*, ed. Shakib Arslan (Cairo, 1352/1933), pp. 106-11). For the views of Ma, bad and Ghaylan, see Ash'ari, *op. cit.* I, 200; Baghdadî, *op. cit.* pp. 70 and 125; Ahmad B. Yahya B. al-Murtada, *Kitab Tabaqat al Mutazila*, ed. S. Diwald-Wilzer (Beirut and Wiesbaden, 1961), pp. 25-27. See also W. M. Watt, *Free Will and Predestination in Early Islam*, pp. 40-48. 53-54; Albert N. Nadir, *Les Principales sects Musulmanes* (Beirut, n.d.), pp. 42-43.
 39. For Jahm's ideas, see Ash'ari, *op. cit.*, I, pp. 197-98; Abu al-Husayn al-Malati, *op. cit.* pp. 93. For Modern studies, see W. M. Watt, *Free Will and Predestination in Early Islam*, pp. 96-104; Albert Nadir, *op. cit.*, pp. 40-42.
 40. Abd al-Qahir Al-Baghdadi states that the school of thought to which he belonged (the Asharites) approved of Jahm's views about jabr, but disagreed with him only on the question that the Qur'an was created, a doctrine which they repudiated and for which Jahm was executed

(see Baghdadi, *Kitab Usul al Din*, I, 333).

41. For the life of Wasil, see al-Murtada, *op. cit.*, pp. 28-35; and Ibn Khallikan, *Wafayat al-A'yan*, V, 60-64.
42. See al-Murtada, *op. cit.*, pp. 33-34. Wasil seems to have been sympathetic with Shi'i views of political justice and supported them in their claim to the Imamate. For the possibility that he was engaged in an active role in Abbasid propaganda when Shi'i and Abbasid leaders joined hands against the Umayyad caliphate, see W. M. Watt, *Islamic Philosophy and Theology*, p. 61.
43. The idea of dividing sinners into grave sinners (*murtakib al-kabira*) and venial sinners (*fasiq*) coincides with the Catholic doctrine which divides sins into two classes: *peccatum* and *peccatum veniale*. The first represents the Kharji position on the infringement of political justice; the other is equivalent to Wasil's doctrine of the "intermediate position."
44. For the story of Wasil's separation from al-Hasan, see Shahrastani, *op. cit.*, p. 33; cf. Abu al-Hasayn al-Mali, *op. cit.*, p. 41.
45. See al-Jawzi, *op. cit.*, pp. 25 and 42-43.
46. Muslim *Saphih*. (see under Iman, trad. 106); Wensinck's rendering of the Tradition in the *Muslim Creed*, p. 45.
47. This Tradition, raising questions on the relationship between faith and works, has been the subject of controversy among theologians and therefore doubt has been raised about its authenticity (see Nawawi, *Saphih*, I, 149; and Wensinck, *op. cit.*).
48. Cf. W.M. Watt, *Free Will and Predestination*, pp. 63-64.
49. Raverty, vol. 1 p. 624n; Isami, pp. 116-17; *Tabaqat-i-Akbari* (Eng. Trans.) vol. I, p. 71.
50. Aziz Ahmad, pp. 205-07; Habib & Nizami, pp. 245-46.
51. Barani, pp. 210-11.
52. A plain Twelve miles east of Old Delhi.
53. His real name was Sulaiman Shah; Ikit Khan was his title, Ikit in Turki means young. "Isami (p. 269), however, refers to his title as Lakad Khan.
54. Barani, pp. 272-76; Isami, pp. 269-71; Fuller & Khallaque, pp. 54-60; Lal, pp. 104-07; CHI, vol. 111, pp. 103-04.
55. Barani, pp. 334-36; Elliot & Dowson, vol. 111, pp. 205-06; Briggs, vol. 1, p. 215; Habib & Nizami, p. 418; Lal, pp. 295-96; CHI, vol. 111, pp. 117-18.
56. Barani, pp. 391-93; Elliot & Dowson, vol. 111, pp. 216-17; Habib & Nizami, p. 436.
57. Ever since her son Dawar Malik's claim to the throne, after Sultan

Muhammad's death in 1351, had been ignored by the nobles, who had offered the crown to Firoz Tughluq, Khudawand Zada bore a secret grudge against her imperial cousin; Afif, pp. 45-46.

58. Afif, pp. 100-04; Elliot & Dowson, vol. 111, pp. 290-92; CHI, vol. 111, p. 177.
59. Briggs, vol. 1, p. 271.
60. *Makhzan-i-Afghani*, p. 79; *Tarikh-i-Dawudi*, p. 59, Habib & Nizami, p. 694.
61. Only three persons, namely, Malik Qurbuddin 'Alwi, Nasiruddin Rana, the *Shahma-i-pil*; and Malik Amir Jamali Khalji, father of Qadr Khan, who had remained loyal to the late Sultan to the last moment of his life and had refused to accept any money from 'Alauddin Khalji, were spared, and no harm was done to them or to their families Barani, pp. 250-51; Elliot & Dowson, vol. 111, pp. 162-63.
62. Only three persons, namely, Malik Qutbuddin 'Alwi, Nasiruddin Rana, the *Shakhna-i-pil*; and Malik Amir Jamali Khalji, father of Qadr Khan, who had remained loyal to the late Sultan to the last moment of his life and had refused to accept any money from 'Alauddin Khalji, were spared, and no harm was done to them or to their families: Barani, pp. 250-51; Elliot & Dowson, vol. 111, pp. 162-62.
63. Bring vol. 1, p. 195; Habib & Nizami, pp. 347.
64. Elliot & Dowson, vol. III, pp. 205-06.
65. *Rhla*, p. 86.
66. Elliot & Dowson, Vol. 111, pp. 329-30; *People and Politics in Early Medieval India*, pp. 70-71.
67. *Tarikh-i-Firishtha* (Nawal Kishor Press, Lucknow editions), p. 175; Habib & Nizami, p. 175; Habib Nizami, p. 676.
68. *Ibid*.
69. Barani, pp. 488-89; Habib & Nizami, pp. 533-34.
70. *Tabaqat-i-Akbari* (Eng. Trans), vol. 1, pp. 380-81; CHI, vol. 111, p. 244.
71. *op. cit.*, vol. 1, 347; Habib & Nizami, p. 705; CHI, vol. III, p. 248.
72. Ibn Battuta, who is the narrator of this case (Rehla, pp. 77-81), remarks that Amir Saifuddin Ghadda would have been given capital punishment for his crime, but leniency was shown to him because he was a foreigner.
73. *Rehta*, p. 91.
74. *Tughluq Dynasty*, pp. 262-63.
75. *Rehla*, p. 92.
76. *Tabaqat-i-Nasiri*, p. 242.
77. Barani, p. 40.

78. Barani, pp. 83-84; *History of Bengal*, vol 11. p. 61; Habib & Nizami, pp. 292-93.
79. Aziz Ahmad, pp. 279-80. It may be mentioned here when Malik Shuhabuddin was also defeated and compelled to flee before Tughril, he was not accused of having neglected his duty, and no punitive step was taken against him by the Sultan.
80. *Rehla*, p. 93.
81. *Ajif*, pp. 219-20
82. *Some Aspects of Afghan Despotism in India*, p. 42.

Criminals and Muslim Rulers

"Very great is the responsibility of a ruler, for he will be questioned on the Day of judgment regarding the condition of his people and about all acts of justice and injustice committed by him. great, too, is the reward awaiting the just monarch, for he will find a place under the banner of the Prophet on the Day of Reckoning¹."

No government can succeed in wiping out tyranny, oppression and injustice completely, but the Sultanate of Delhi (1206-1526) provided the people with a well-organized department of justice. The Sultans considered it part of their sacred duty to dispense impartial justice to all, irrespective of caste, creed, social or political status. They were familiar with, and sincerely believed in, the Arabic saying "A kingdom may last while there is irreligion, but it will not endure when there is oppression²."

The Sultans ordered court proceedings to be held in public, divided responsibility and power among different functionaries of the State, so that an effective system of check and balance was established. Of all the departments of the gov-

ernment, the ministry of justice was the most efficient and popular, and the insistence of the Sultans on impartial justice must have played an important role in strengthening their hold on the country.

The Sultanate of Delhi began its onward journey with the assumption of imperial power by Qutbuddin Aibak in 1206, on the death of his master, Sultan Shihabuddin Mubammad Ghuri. Qutbuddin was a monarch of lofty courage and pure faith. Renowned for his generosity³ and high sense of justice, he was quite worthy of the throne of Delhi. "During his reign of peace and tranquillity," says Nizami, "treasury required no guard, the flock needed no shepherd,—so much so that the wolf and the sheep drank water side by side out of the same pond. The very mention of thieves and theft was out of question⁴." "He established justice and equity with such strict foundations," remarks Fakhri-i-Mudabbir, "that in spite of the large number of troops gathered round his banner, consisting of Turks, Ghuris, Khurasanis, Khaljis and Hindustanis, no one dared to take by force a blade of grass, or to lodge with peasant."⁵ In short, he possessed all the excellent qualities and virtues required for a monarch. He accomplished through severity and benevolence, his two great weapons, what others achieved by tack and diplomacy. The terror of his punishment and the hope of his bounty brought his deadliest enemies to his side and contributed to the establishment of a strong and stable government.⁶

The next Sultan, Shamsuddin Iltutmish (1211-36), was a brave and successful general. Courage, sagacity, moderation and fore-sight were his noble and marked qualities. He was an able and successful administrator. He appreciated merit in learned men and was himself a well-read prince⁷. He was a pious Muslim, regular in the observance of the five daily prayers and all other rites of his faith. Though highly religious, he was far from being dogmatic. He was, in the words of Minhaj Siraj, a "Just and munificent Sultan, upright, beneficent, a zealous and steadfast warrior,—the patronizer of the learned, the disposer of justice⁸—Never was a sovereign so virtuous, kind-hearted and reverent towards the learned

and the divine who sat upon the throne⁹." Ibn Battuta refers to him in these glowing terms, "Among his memorable deeds was the fact that he exerted himself in redressing grievances and in rendering justice to the oppressed. He ordered that everyone, who was oppressed should wear a dyed garment, while all the inhabitants of India wear white clothes. Whenever the Sultan held a court of Justice and whenever he marched on horseback, as soon as his eyes fell on a person wearing a dyed garment, he forthwith looked into his case and obtained justice from the person who had oppressed him.

"But he was not content with this. He said to himself, 'Some persons might be oppressed in the course of the night and they might desire immediate redress of their grievance.' So he set up two marble statues of lions on two towers at the gate of his place, and round their necks were two iron chains with a huge bell. The oppressed person would shake the bell in the night and the Sultan hearing the sound would immediately look into the case and administer justice¹⁰."

Sultan Iltutmish, on his death, was succeeded by his son, Ruknuddin Firoz Shah. Ruknuddin was a handsome, gentle and generous prince, but unfit as a ruler. He was, therefore, soon deposed, and the Delhi throne passed on to his sister, Raziya (1236-40). Raziya was decidedly one of the "great monarchs" of the "Early Turkish Empire of Delhi." She "was a great sovereign, and sagacious, just, beneficent, the patron of the learned, a dispenser of justice, the cherisher of her subjects, and of warlike talents, and was endowed with all the admirable attributes and qualifications necessary for kings¹¹."

Raziya was succeeded by her brother, Sultan Mu'izzuddin Bahram (1240-42), who was a prince "Fearless, full of courage and sanguinary. He was in nature unassuming and frank; and never had about his person jewellery and finery after the custom of the kings of this world, not did he ever evince any desire for girdles, silken garments, decoration banners, or display." He would have made an able ruler, but for the "forty", who, failing to make a puppet Sultan of him, conspired against, and assassinated, him in May, 1242¹².

After the assassination of Bahram the crown passed on to his nephew, Sultan 'Alauddin Masudi¹³ (1242-46). 'Alauddin was, however, a pleasure-seeking prince and behaved tyrannously with his *maliks* and *amirs*, several of whom were wantonly murdered by his orders. They became so alarmed that they saw their safety in his dethronement which was effected in June, 1246. He was cast into prison and done to death¹⁴. His place on the throne was offered to and accepted by, Nasiruddin Mahmud, the youngest son of Iltutmish.

With the accession of Sultan Nasiruddin Mahmud (1246-66) opened a new chapter in the history of the early Turkish rule in India. He ruled over the Delhi empire for twenty years ably, assisted by his regent, Ulugh Khan, who later ascended the throne of Delhi under the title of Sultan Ghiyasuddin Balban (1266-87). Nasiruddin Mahmud possessed humility, purity of character, faith, abstinence, clemency, beneficence, impartiality, forbearance, rigour, manliness and deep regard for scholars and men of letters.¹⁵ A model of all virtues, he was endowed with a supreme gift of sympathy and tenderness and renowned for justice. His personal character was reflected in the benevolent administration of his empire.¹⁶

When Nasiruddin Mahmud passed away in 1266, the throne was occupied by Balban. Sultan Balban was very serious about establishing justice in his empire. In this efforts to secure justice, he appointed trusted spies in all parts of his realm. In order that they should discharge their duties with efficiency and honestly, he did not give them too large a field of observation. He never failed to attend to what came to his knowledge through those spies. His spies were greatly feared by the nobles and government servants, and neither they nor their sons or dependants dared distress any innocent person¹⁷. The Sultan was extremely stern in the enforcement of justice and, in this regard, showed no favour or partiality towards relatives or favourites.¹⁸ He gave orders for the execution of Malik Baqbaq, *sar-i-jandar* and sief-holder of Badayun, who had killed his *farrash* (footman) in a fit of intoxication, and also ordered the execution of the *barid* (official news-writer) of Badayun, who had failed to report the murder to

him. It was further required that the *barid's* corpse be hung at the main gate of Badayun¹⁹. On another occasion he ordered five hundred lashes to be inflicted upon Haibat Khan, governor of Awadh, for having beaten an innocent person to death²⁰.

Ibn Battuta credits Sultan Balban with having built "a house called a house of safety (*dar-ul-aman*). The debtor, who entered it, had his debt paid by the Sultan, and whoever sought refuge in it for fear was safe. And whoever entered it after having killed anybody, the Sultan interceded on his behalf to conciliate the heirs of the deceased; and if a criminal sought shelter in it, his pursuers were accorded satisfaction. It was in this house that he (i.e. Sultan Balban) was buried²¹."

Sultan Jalaluddin Firoz Khalji (1290-96), the founder of the Khalji dynasty, was essentially a just, generous and kind-hearted ruler²². Though he had spent most of his life as a soldier, he was a highly cultured man and a patron of learning. He himself could compose verses and lyrics, and his court was adorned by such men of letters as Tajuddin Iraqi, Amir Khusarau, Taj Khatib and Saduddin Mantiqi²³. His age and temperament both contributed to his extreme gentleness. Thieves, when brought before him, were let off on promise of future good conduct, and the only punishment he could inflict upon robbers was to send them to some distant place.²⁴ He was incapable of harbouring any ill-will. This is proved by the following instances:

1. Two persons, Maulana Sirajuddin Sawi and a Mandahar, had given him cause of resentment during his governorship of Samana in the time of Sultan Ghiyasuddin Balban. Maulana Sirajuddin had composed a long poem under the title, *Khalji Name*, in condemnation of Jalaluddin Khalji, and given it wide publicity. Similarly, the Mandahar had once assaulted him with a dagger and wounded him in the face. The wounds, even when healed, had left behind scars on his cheeks. The two offenders became extremely nervous when they heard that he had become Sultan. They came to him, their heads hanging low, their faces all repentant. To the utter amazement of everyone present, Jalaluddin Khalji not only pardoned

but even rewarded them handsomely.²⁵

2. In the second year of his reign, Malik Chhajju, nephew of the late Sultan, Ghiyasuddin Balban, assumed independence in his fief at Kara. Sultan Jalaluddin sent his second son, Arkali Khan, to deal with him. Chhajju was defeated and taken prisoner along with his followers. When the prisoners were produced before the Sultan, he ordered them to be unfastened and provided with a change of dress and refreshments. He spoke to them affectionately and put them at ease by saying that they had no reason to feel guilty.²⁶

Sultan Jalaluddin Khalji was a keen well-wisher of his subjects. He took the greatest care in picking the right men to run the administration; he never entrusted mean and vicious persons with power and authority.²⁷ He made sincere attempts to free the institution of government from the malevolent influence of politics which he abhorred from the very core of his heart. Under his rule, the people were not considered chattels to be driven by the dictates of officials. They were given a scope for their development and made to sense and feel their own individuality. Barani clearly states that during his reign no official could take undue advantage of his position, while administering affairs of the people, and act contrary to the law in matters concerning public welfare.²⁸

Alauddin Khalji (1296-1316), who captured the throne of Delhi by murdering his pious uncle, was a sovereign of very strong will and inexhaustible energy. He possessed the qualities of a born military leader²⁹ and great administrator, and kept the vast possessions under his firm control almost as long as he lived. In organizing his civil administration, he displayed great originality and mental vigour. He did not content himself with administering the institutions that had come to him in inheritance from his predecessors; he took steps to reform them and even brought new institutions into existence for the benefit of his empire.³⁰

Sultan 'Alauddin ruled with a strong hand and exercised personal supervision over the conduct of his officials. No one was allowed to take a *dam* illegally from the peasants;³¹ fraudu-

lent practices were strongly dealt with.³² Though himself illiterate, he extended his patronage to learned and pious men and granted stipends and land for their maintenance.

Like Ghiyasuddin Balban, Sultan 'Alauddin believed in the majesty of the monarch and in his being God's representative on earth. He had the firm conviction that greater wisdom was given to the monarch than to any other human being; and that his will should be the law. It was this belief in his being endowed with special wisdom that prompted him to oppose the interference of the *ulama* in matters of State. His political theory is clearly set forth in the words he addressed to Qazi Mughisuddin, whom he once consulted about the legal position of the sovereign's power in the State. He upheld the royal prerogative of punishment and justified the mutilation of dishonest and corrupt persons, though the Qazi declared it contrary to canon law. The Sultan's reply to Mughisuddin was as follows: "To prevent rebellion, in which thousands perish, I issue such orders as I conceive to be for the good of the State and the benefit of the people. Men are heedless, disrespectful, and disobey my command; I am then compelled to be severe to bring them into obedience. I do not know whether this is lawful or unlawful; whatever I think to be for the good of the State or suitable for emergency, that I decree, and as for what may happen to me on the approaching day of judgement, that I know not³³."

As will be evident from the above narrative, Sultan "Alauddin had no regard for kinship and inflicted punishment without distinction and mercy on the guilty. The rigour of his punishments had its due effect: "robbery and theft, formerly so common, were not heard of in the land. The traveller slept secure on the highway and the merchant carried his commodities with safety from the sea of Bengal to the mountains of Kabul and from Telengana to Kashmir.³⁴"

Sultan Ghiyasuddin Tughluq (1320-25), the founder of his own dynasty, possessed a warm heart and a liberal mind. He based his administrative system upon the principle of justice and moderation and, in the enforcement of his regulations, was guided by his desire to advance the public welfare.

Himself a devout and God-fearing Muslim, he acted in dealing with his subjects with due regard for human failings and abstained from every kind of excesses. He put down disorder with a high hand but was never want only unjust or cruel. He enacted a code of laws in conformity with the dictates of the *Qur'an*, which constituted the basis of his civil and judicial administration. He was a model of justice and goodness, and was highly considerate in his treatment of others. He had a lofty idea of the duty of kingship and incessantly laboured to promote the welfare of his subjects and scrupulously eschewed everything that was likely to injure their interests. He extended his protections to all; his watchword was moderation and, in all that he did, he kept in his mind this golden rule and never acted contrary to justice. Ziyaddin Barani dwells enthusiastically upon the justice and equity of his reign and says that as long as he ruled, "the wolf dared not seize upon the lamb, and the lion and the deer drank at one stream³⁵". Not satisfied with his own encomium, he quotes Amir Khusrau's distich to emphasize his point:

*Kare na kard juz ba kamalat-i-ilm-o-oql,
Goyi ki sad Imama ba zir-i-kulah dasli.*³⁶

[Substance: Every deed of his bore the stamp of learning and wisdom; it may be said that he wore a hundred turbans (distinctive head-dress of the learned) under his crown].

Ibn Battuta refers to him thus: "He was a just and accomplished ruler."³⁷

The next ruler of the dynasty, Sultan Muhammad bin Tughluq (1325-51), though merciless in punishing wrong-doers, enjoyed a reputation for his love of justice. Ibn Battuta cites the following examples to show the Sultan's high sense of justice:

1. Once a Hindu filed a suit against the Sultan to the effect that he had killed his brother without any cause, and had him summoned before the *qazi*. The Sultan walked on foot unarmed to the *qazi's* court, where he saluted and bowed. The *qazi* gave his verdict in favour of the complainant and the Sultan bought his life by paying

blood-money to the heir of the deceased.³⁸

2. Once a Muslim filed a suit against the Sultan making certain monetary calims. The *qazi* gave his judgement against the Sultan, and the latter paid the money to the plaintiff.³⁹
3. A boy filed a suit before the *qazi* alleging that the Sultan had struck him without cause. The *qazi* pronounced his decision against the Sultan, ordering him to indemnify, the boy by payment of cash if accepted; otherwise he must let the plaintiff beat him in return. The boy refused to accept money; the Sultan, therefore, gave him a cane saying, "In call upon you by my head, you must strike me just as I struck you." The boy took hold of the stick and struck the Sultan twenty-one strokes, so that his cap fell off.⁴⁰

In the last case the Sultan followed the example of the holy Prophet. Once the Apostle of Allah was distributing some commodity among people. One person, when he came to receive his share, bent too low on him. Irritated, the holy Prophet struck him with a bough rather hard. Remorse overtook him immediately and he promptly offered himself for retaliation. The victim, however, said, "No Apostle of Allah, I have already forgiven you."⁴¹

Justice had so far been a monopoly of the theologians; Sultan Muhammad deprived them of this monopoly and constituted himself into the Supreme Court of Appeal. Ibn Battuta and Shihabuddin both testify to the Sultan's desire to administer equal justice to all classes of his subjects. He was easily accessible even to the meanest of his subjects who wanted to appeal to him for justice. Ibn Battuta writes that twice a week, i.e. on every Monday and Thursday, the Sultan held his court of justice in the hall of audience, when only four *amirs* were allowed to be present near him. They were the *amir-i-hajib*, the *khas jhajib*, the *saiyid-ul-hujjab* and the *sharaf-ul-hujjab*. The Sultan knew that the aggrieved persons would find it difficult to obtain access to him and, therefore, he posted four *amirs* at the four gates of his palace and ordered them to record the complaints of the public. If a plaintiff

could not get his complaint recorded at the first gate, he went to the *amir* at the second gate, and if he failed there also, then to the third and lastly to the fourth, if the former refused to admit his complaint. In case the last refused, the complainant was permitted to go to the *Sadri-jahan* and, failing him, he could approach the Sultan.⁴² The Sultan used to examine all those records in the evening (strictly speaking after the *Isha* prayers), and, if any case, in which an officer had refused to do his duty, was brought to his notice, he strongly reprimanded him.⁴³

It was publicly announced, "If anybody has a complaint, a grievance, he should come forward."⁴⁴ When somebody came or stood in front of the Sultan, he was neither beaten nor prevented from explaining his complaint. He stated it with full freedom and the Sultan declared his judgement about it.⁴⁵

On his accession, Firoz Tughluq (1351-88) is said to have offered prayers saying, "O Lord! the stability of States, the peace, regulation and occupations of government do not depend upon man. Permanence of dominion depends upon Thy hehest. O God! Thou art my refuge and my strength."⁴⁶

In every moment of his life, the Sultan feared to take drastic steps lest he should have to answer for them to God on the Day of Last Judgement. Unlike Balban, 'Alauddin Khalji and his immediate predecessor, Sultan Muhammad, Firoz Shah did not make any attempt at striking terror among the people by the use of brutal force. On the contrary, he wanted to be loved by his subjects and remove all fears from their minds.⁴⁷ This liberal policy expressed itself in these words: "Do not strive to shed the blood of men, because life does not return once it passes away."⁴⁸

The offenders were generally forgiven by him. His liberalism was especially tested when he forgave a large number of miscreants who had made attempts on his life. When Khwaja-i-Jahan Ahmad Ayaz was presented before him and his courtiers insisted that he should be severely dealt with, the Sultan remarked, "It was a high duty of kings to overlook any irregular acts of their officers."⁴⁹

Although benevolence was the keynote of the idealism of Firoz Tughluq, yet it was not completely free from strictness. At times the Sultan could become very severe upon the offenders; this is evident from the punishments he inflicted upon Khusrau Malik⁵⁰, Dawar Malik⁵⁰, Khudawand Zada⁵¹, and Shamsuddin Abu Raja⁵². Above all, he never showed any mercy to murderers and robbers.⁵³

But as whole, the judicial system of Firoz Shah was characterized by a spirit of mercy which won for him popularity among the common people as well as the nobility and the *lana*, all of whom were tired of the severities of the reign of his cousin and predecessor. Contemporary historians have lavished praises on the new spirit which is especially revealed in the regulation of the Sultan abolishing the brutal punishments like "mutilation of hands, feet, ears and nose; plucking out of the eyes; pouring molten lead down the throats of the people; hammering the bones of hands and feet to fragments; roasting alive in fire; driving nails into hands, feet and chest; flaying alive; battering with spiked rod; sawing a body into halves and other forms of mutilations."⁵⁴ The Sultan had himself witnessed the evil consequences of the brutal punishments inflicted by Muhammad Tughluq, which had occasioned resentment on the part of the *ulma* and the nobility. Firoz, therefore, did away with all forms of inhuman punishment. He also abolished the *diwan-i-siyasat* or the court of correction, which had been established by Muhammad Tughluq especially for hardened criminals.

Khizr Khan (1414-21), the founder of the Saiyid dynasty, possessed the qualities of charity, courage, mercy, truth and kindness. He was esteemed a just, generous and benevolent ruler for the age in which he lived, on which account his death was lamented by his subjects, and as a token of their respect for his memory the people of Delhi, by common consent, wore black for three days.⁵⁵

Khizr Khan's son and successor, Saiyid Mu'izzuddin Mubarak Shah (1421-34), was esteemed a man of good talents and just and benevolent. His temper was so equal that he never spoke in anger to any person in all his life.⁵⁶

The last two rulers of the dynasty, Muhammad Shah (1434-45) and 'Alauddin 'Alam Shah (1445-51), did not have peace and were all the time busy suppressing one revolt after another; they were also weak kings. They were, however, known for their impartiality in dispensing justice.

Bahlul, who founded the Lodi dynasty in 1451, was a wise, brave, friendly, considerate, humble, just and kind-hearted ruler. He was a man of charity and never turned away a baggar or a poor man from his door. He was devoted to his religion and followed the letter of the law with the sincerest fidelity. He was chivalrous to the fair sex. When Malika-i-Jahan, the queen of Husain Shah of Jaunpur, fell into his hands in the war of 1466, between him and the Sharqi Sultan, he treated her with great courtesy and consideration and sent her back to her husband under a powerful escort.⁵⁷ He was rightly esteemed a virtuous and mild ruler, executing justice to the utmost of his knowledge and ability, and treating his courtiers as companions. His love of justice was so great that he used to hear personally the petitions of his subjects and grant redress. Though a man of no great literary acquirement himself, he valued the society of learned men and extended his generous patronage to them. He took delight in visiting men of piety in their cells to seek their blessings.⁵⁸

Sultan Bahlul's son and successor, Sikandar Lodi (1489-1517), was the greatest of the three rulers of the dynasty. He never omitted to devote a certain time to hear complaints in public, and has been frequently known to sit at business the whole day long even after his appointed time for meals and rest.⁵⁹ He took a personal interest in the complicated cases brought before the imperial tribunal. He had an innate love for justice. No body was immune to law; a common man could easily approach the royal court even against a high grandee, if his grievance was not redressed in the lower courts. The Sultan listened to the petitions of the aggrieved persons and disposed of cases according to their merits. He was strictly impartial in matter of justice and nothing could make him deviate from it. His judicial system was very efficiently organized under Miyan Bhua. Darya Khan Nuhani had to be

present at the court from early morning till late in the night to receive petitions and inquire into the grievances.⁶¹ As soon as a complaint was received, the *qazi* with the help of twelve *muftis* (jurisconsults) went through it and on their advice gave his decision and sent it to the Sultan for his approval.⁶² Sikandar's vigorous administration ensured peace and prosperity and guaranteed justice to the common man. All the highways of the empire were safe from bandites and robbers.⁶³

Sultan Sikandar was as remarkable for his fear of God as for his benevolence. One day, while advancing against his brother, Barbak Shah⁶⁴, in the early part of his reign, a *qalandar*⁶⁵ met him and said, "May God grant you victory"; in reply the Sultan said, "Pray that the victory be his who will best promote the good of his subjects."⁶⁶ He had numerous pensioners among the needy people and holy men of his empire, to whom he sent their stipends twice a year, and a suit of clothers once a year. He ordered alms of food, both cooked and uncooked, to be distributed on every Friday to all who chose to benefit from them, be he in town or on the march.⁶⁷ He encouraged charity of all descriptions and did not fail to commend his nobles for any generous acts which reached his ears, and, thus, promoted a disposition to do good among his public officers saying, "You have laid a foundation of virtue, you will never repent it."⁶⁸

Ibrahim Lodi (1517-26), with whose defeat in the battle of Panipat on 21 April 1526, the Sultanate of Delhi came to an end, was a brave and fearless soldier and a fairly successful commander. He was honest and laborious, generous and kind. From the meagre account of the medieval chronicles, it is clear that his private life was good and that he applied himself to the business of the State with zeal. He had some reputation for piety as well. He followed his father and grandfather in administering justice impartially.⁶⁹

The Emperor and his Court

In respect of criminal justice, the Shar'a had left a wide field to the discretion of the sovereign.⁷⁰ The Emperor was the highest authority in the kingdom and was the fountain of

justice. It is wrong to say, as alleged by the foreign travellers, that his will was always law in all affairs.⁷¹ 'The great Mogul is so absolute that there being no written Laws, his will in all things is law, and last decision of all causes, both civil and criminal. He makes a tyrannical use of this absolute power.' Giovanni Careri in *Indain Travels of Cereri*, p. 240. There was the Islamic law and he dared not transgress the boundaries of the Shari 'a without provoking misgivings in the hearts of the orthodox. It was particularly true in the case of Shah Jahan and Aurangzeb who were staunch *Sunnis* and based their decisions as far as possible on the orthodox law. The Mughal Emperors, however, were subject to no other religious authority in or outside India.

Extrordinarily hard-workings as the Mughal monarchs were, they kept an eye on all departments of the State including that of law and justice. The Emperor himself was the highest court of appeal as well as the court of first instance. It seems, however, improbable that he had time enough to dispose of all the cases that came up before him. A large number of appeals from distant parts of the country could not be filed in his court. The innumerable inconveniences that attended long travels in the Middle Ages might have made the people hesitant to go to the imperial court.

The Mughal Emperor used to hold his court everyday where ordinary cases were decided. Akbar held his court after prayers and administered justice there.⁷² Every Mughal Emperor, however, set apart a day of the week for administration of justice. In the case of Akbar it was Thursday⁷³, for Jahangir Tuesday⁷⁴ and for Shah Jahan and Aurangzeb Wednesday.⁷⁵ As regards Akbar, Ab'ul Fazl has recorded : "In the investigation of cases of the oppressed, the Emperor placed no reliance on testimony or oaths. He drew his conclusions from the contradictions in the narratives, the physiognomy, and from sublime researches, and noble conjectures."⁷⁶ Father Monserrate has praised Akbar's regard "for right and justice in the affairs of Government."⁷⁷ He was by nature kindly and benevolent and was "sincerely anxious" that offenders should be punished.⁷⁸

William Hawkins who visited India during Jahangir's reign (168.13), remarked that the Indian kings sat "daily in justice every day."⁷⁹ Nicholas Withington (1612-16) observed that Jahangir sat in his court at Agra three times a day to do his 'great justice.'⁸⁰ Edward Terry (1616-19) confirms this and adds that any complainant there could hold up his petition and was sure to receive a hearing⁸¹. We learn from the account of William Hawkins that Jahangir came to the Audience Hall at 3 o'clock and took his seat on the royal throne while his nobles and *mansabdars* kept standing. For two hours he heareth all cases in this place.⁸² According to another eyewitness account he came to the court between 3 and 4 o'clock in the afternoon and did not leave till the evening.⁸³

The foreign travellers have also referred to the golden chain of justice during Jahangir's time. He had a bell or bells hanging in his seraglio 'with a cord which reached out into an outer room.' Any complainant who had failed to secure justice could ring the bell. The emperor sent up for him, examined the case and pronounced judgement or took any other appropriate action.⁸⁴ In spite of this evidence, it cannot be believed that many people could make use of the chain of justice.

"Shahjahan upheld the maxims of his father that true justice must be enforced."⁸⁵

Aurangzed was "desirous of appearing a great lover of justice."⁸⁶ He maintained that a king should apply himself unweariedly and painstakingly to the dispensing of equal justice to every body.⁸⁷ He endeavoured to "maintain in the eyes of the world that he is zealous in the cause of justice."⁸⁸

The Mushal emperors even when out of the capital, did not neglect the cause of justice. While embarking on the Bengal expedition, Akbar held his court in the boat and decided cases there.⁸⁹ During his stay in Ahmedabad in 1618, Jahangir appeared in the *jharkha* every day for about three hours to administer justice and award punishment to the guilty.⁹⁰

Even while he was on march the King failed not to hold the court in a tent and administer justice. "The kings of Hin-

dustan seldom fail, even when in the field, to hold this assembly twice during the 24 hours, the same as when in the capital. The custom is regarded as a matter of law and duty, and the observance of it is rarely neglected.⁹¹

No court was held on the special day reserved for the administration of justice. Straight from the *darshan* window, the Emperor, followed by officers, *qazis*, muftis, scholars and the *kotwal*, went to the private Audience hall. From 8 o' clock in the morning till noon the Emperor continued deciding cases. As a court of first instance he got the details of the complaints from the plainiffs, tried to ascertain the facts by inquiry, consulted the lawyers about the law and then pronounced judgement. Appeals were also filed in his court. This was the case when the plaintiff had either been refused a hearing in the local courts or had received an adverse judgement. Most often when it was not possible for the Emperor to ascertain the facts, he would send the case back to the court of its origin. The court made full investigations and delivered judgement. In certain cases the matter could again be referred to the Emperor.⁹²

Besides the special day reserved for administering justice, the Mughal Emperor used to hear cases in the *Diwan-in- Am* also on almost all the days of the holding of the court. The petitions of the aggrieved concerning different matters were presented before him. The persons involved were ordered to present themselves before the Emperor who heard their complaints and delivered judgement usually on the spot. In certain cases he orderd full investigation, sent for detailed report and then gave his decision. According to Bernier, Aurangzeb devoted two hours on another day to hear in private the petitions of ten persons selected from the lower order. One day he fixed to attend the justice-chamber, called *Adalat Khana*, where has was assisted by two principal *qazis*.⁹³

As a court of first instance and as the highest court of appeal, the Emperor was supposed to dispose of a large number of cases. This, however, was not possible. Many plaintiffs could not reach his court for fear of the provincial or local authorities, long distances and unsafe roads. One thing is

clear. Trials in Mughal India by the kings were speedy and so the punishments.⁹⁴

Government Officials and Administration of Justice

Governor : The governor, like the Emperor, set apart a day for administering justice in person⁹⁵ The *qazi* and other law officers attended the court and helped the governor in deciding cases. The procedure followed could not be different from that of the imperial court. The governor took the law from the law officers and pronounced judgement. In case, however, there was not sufficient legal evidence, but the governor and the officials of the court were convinced of offence, the accused was sentenced.⁹⁶ Against the organized bands of robbers and rebels, the governor used to despatch armies. In Mughal India it was obligatory on the part of the executive officers to ensure the safety of the people from robbers. For all cases of thefts and robberies in their jurisdiction the responsibility lay with the respective executive officers.⁹⁷

The governor inquired into the cases of the captives that were sent to him by the local officers and dealt with them in accordance with the law.⁹⁸

The governor was 'an absolute lord, in the strictest sense of the term,' He was 'In his own person the intendant of justice, the parliament, the presidial court...'⁹⁹

Faujdar : The *faujdar* was responsible for the maintenance of law and order in the district. He took measures to guard the roads against the activities of the robbers. It was his duty to traverse the country along with his armed guards and hunt out the culprits. Whenever a robbery took place in his jurisdiction, he was to trace the robbers, find out lost goods, or compensate the sufferer.¹⁰⁰ He sent the captives to the governor¹⁰¹ for investigation and punishment.

Kotwal : The *Kotwal* was an important officer and the chief of the city police. He was required to attend the court of justice held by the Emperor or the governor. From a *farman* issued by Akbar it is clear that the *Kotwal* was required to perform multifarious duties.¹⁰² In Aurangzad's *farman* his duties had been made very clear. Whenever his men arrested a

culprit and brought him to his *chabutra*,¹⁰³ the *kotwal* was personally to investigate the charge against him. If he was found innocent, he was forthwith to be released. If some body had any charge against him, the *kotwal* was required to direct that man to resort to the court against the alleged culprit. When the *qazi* sent a culprit to him for detention, the *kotwal* was to carry out the *qazi's* orders and keep the person concerned in prison. He was to send the detenué to the *qazi's* court every day so that his case could be decided quickly. If the *qazi* had fixed the date for his trial, the prisoner was to be sent to his court.¹⁰⁴ Manucci defines the *Kotwal* as the 'chief magistrate ruling over the whole city'.¹⁰⁵

Thanedar : In the pargana there was the court of the *thanedar*, at least during the reign of Aurangzeb. The *thanedar* was entitled as *Tahawur Sha'ar* or *Tahawur Dastgah*. The *gumashia*, news-writer, biographer, *chaudharis*, and *qanungos* were the officials usually present at the court of the *thanedar*. In the 49th year of the reign of Aurangzeb, *Tahawur Dastgah* Udai Singh, *thunedar*, of Pargana Bhaurasa in the *sakar* of Sarangpur, held court in the village Sahiya. The *mugaddams* of the village invited the *thanedar* and his soldiers to a feast. There used to be a *naib* or assistant *Dastgah*.¹⁰⁶

Aurangzeb had ordered that local cases should be tried by local officers in their courts.¹⁰⁷

The Qazi and his Court

The Qazi : The word *qazi* philologically means consideration of a matter and determining it. Its literal rendering is "consummation." Among other things it means the office of a *qazi* or judge, and the sentence of a *qazi*.¹⁰⁸

The *qazi* had an important place in every Muslim country. In the Ottoman Empire he exercised judicial functions and also a sort of general supervision over the conduct of administration.¹⁰⁹

In Muslim countries the *qazi* was appointed by the Caliph or his representative, the *Sultan*, the Governor or the *Grand Qazi*. The *Grand Qazi* was appointed by the *Sultan* and was required to be full of age and understanding, free, male, a

Muslim equitable, possessed of hearing, sight and knowledge.¹¹⁰

The Muslim rulers regarded it as their duty to do justice personally. The Umayyad Caliphs were the first to create the post of the *qazi* together with other judicial appointments. They had a *qazi*, for each province. Later on, his duties multiplied and he had delegates for their performance. He was a 'Chief Justice, sitting on the high seat of judgement.'¹¹¹

It was necessary for the *qazi* to know the *Qur'an*, the Sunna, what the community had agreed upon by *Ijma* and the divergent opinions held by the earlier doctors. He must have the capacity to comprehend the various aspects of *giyas* when need arose. He must be intelligent, alert, reliable, firm and clement. He must possess reasoning powers. Above all, he should be chaste, an abstainer, just, upright, truthful in speech and resourceful. It was best if he belonged to the *Quraish*.¹¹² He was required to be an adult, a free man, a Muslim sane and unconvicted of slander, and a scholar of blameless life.¹¹³

In case there was only one man capable of holding the office, it was his duty to accept the post and the king could compel him to undertake it.¹¹⁴

In ancient times the *qazi* was expected to have a perfect knowledge of the canon law. Later on it became a matter of secondary importance. Honesty and good sense came to be recognized his only essential qualifications. He could make up for his want of knowledge of the law by choosing learned counsellors or could rely on the reasoned opinion of an acknowledged judicial expert. He was required to possess a perfect behaviour and avoid participation in over-sumptuous feasts and gatherings for singing and gambling.¹¹⁵

The *qazi* was required to well-known sit for justice in an open place in the middle of the town, one well-known to the people. It was not to be in a mosque. According to the *Fatawa-i Alamgiri* and the *Dictionary of Islam*, he could, however, sit in a mosque. He could, if he so desired, decide cases in his house. It was preferable if the house, like the mosque, was

situated in the middle of the town.¹¹⁶

In case of non-Muslims, special magistrates could administer justice. If, however, a Muslim had an interest in the case, the *qazi* alone was competent to deal with it in accordance with the Muslim law. A *Shi'a* or non-Muslim could not decide the case of a *Sunnite*.¹¹⁷

In Muslim countries outside India, the great bulk of ordinary disputes did not come into the court of the *qazi*, as the village corporation and social groups had their own organizations. Certain offences like unchastity and adultery were punished almost automatically with death without the necessity of *qazi's* intervention.¹¹⁸

Jurisdiction of the Qazi's Court : The *qazi* was regarded as an arbiter settling disputes between persons who appealed to him.¹¹⁹ He pronounced sentence of the law on delinquents against whom charges were brought by private persons. His business was to pass decrees merely on the opinion of others.¹²⁰ The *qazi* could decide all cases involving civil and criminal law.¹²¹

Muslim jurists did not recognize the distinction between civil and penal, personal and other divisions of law. They considered the *qazi* competent to administer in his court every branch of law. The existence of customary usage and group tribunals, however, imposed many limitations upon the range of their functions. The limitation of a more serious nature resulting in the weakening of judicial administration was the abuse of penal authority by military and administrative officers, who, without the necessity of a trial, ordered punishments. In Muslim countries like the Turkish Empire the rulers tried to put down these practices and also their evil results by empowering the *qazi* to administer justice according to the Islamic law. The military and police authorities, however, again resorted to arbitrary conduct and showed complete indifference to human life.¹²²

The courts were held in official buildings specifically meant for the purpose. The *qazi* at Agra used to hold his court in the *katchery* situated outside the gate of the Fort. The fate came to

be known as the *katchery* gate.¹²³

There was a judge's court inside the Fort palace of Shahjahan at Delhi.¹²⁴

According to Manrique, the *katchery* was also termed as *chabutra*.¹²⁵

The *qazi* was concerned not only with the settlement of disputes, but with civil contracts also.¹²⁶ In respect of criminal cases he had a wide field to his discretion under the king's instructions.¹²⁷ The *qazi* and his *naib* acted as notary public, registrar, procurator, officiated at marriages of notables, and looked after the property of orphans and minors.¹²⁸ He was also concerned with the administration of religious foundations.¹²⁹

The business of the *Shari* courts was extensive and complicated. Even then there was no provision by law and usage for more than a single judge in each court.¹³⁰

Decision of the first court was regarded as final. No one court in theory had a higher status than another, though such a court did exist in Egypt. Taking of one case for re-trial in another court was strictly contrary to Islamic law.¹³¹

Evidence : The *qazi* was to announce judgment on the evidence of two witnesses. The evidence was in general to be oral.¹³² Testimony of close relations was generally not accepted, nor that of a master in favour of a slave. Evidence of two women was equal to one man and that of non-Muslims was admitted occasionally though grudgingly.¹³³

Two witnesses were required to testify the real existence of a disputed undertaking. The *qazi* must give unlimited credence to their evidence, both in civil and criminal cases. Every man could not be a witness. It was the duty of the *qazi* to draw up a list of men whose perfect probity in the legal sense (*adala*) has after investigation been vouched for by a person whom he trusts. Persons thus chosen were then alone qualified to give evidence before the *qazi*.¹³⁴

The two legal witnesses came to fill the role of assessors of the *qazi* and occupied the position of counsellors. In cer-

tain circumstances, in criminal cases, for example the *qazi* might be compelled to accept the evidence of eye-witnesses, even of women.¹³⁵

The principles regarding witnesses, though respectable, "Sometimes amounted in effect to a denial of justice, especially as the taking of oath was very lightly regarded in all except pious circles. A more frequent abuse was the suborning of false witnesses. In Egypt, provisions were made 'to prevent such miscarriage of justice through the manoeuvres of dishonest persons on pain of the *kadi's* dismissal and punishment.' The conduct of certain judges towards litigants was not always above reproach."¹³⁶

Manucci has remarked that in spite of Aurangzeb's exertions to be justice-loving, his kingdom is over-run with men whose only profession is to act as false witnesses or to forge signatures."¹³⁷ Tavernier observed that witnesses could always be had in great numbers, at cheap rate, and never punished."¹³⁸

Qazi's Remuneration: The *qazi* was paid for his work. Although the law forbids him to accept any present, yet the acceptance of gifts by the *qazi* was a common practice.¹³⁹ Later on he was given a salary.¹⁴⁰

The *qazis* had ample means at their disposal to amass wealth which they did not grudge to utilize.

Usually the *qazis* did not enjoy good reputation. In handbooks of the law of all times 'the *qazis* of our times' are represented as unscrupulous beings whose unreliable judgements were chiefly directed by their greed.¹⁴² Bad *qazis* were there always in all times and most *qazis* were corrupt and ignorant.¹⁴³

The same was true in Mughal India. The contemporaries are one in their opinion as to the covetousness of the *qazis*. Money was their main consideration. Those who could appease their greedy natures, were sure to receive favourable decisions. Aurangzeb's first Chief *qazi*, Abdul Wahab Borah, was notorious for corrupt *qazi* of Burhanpur, was removed from his post and put under arrest on account of corrupt practices. Legal proceedings were ordered against him in 1681.¹⁴⁴

Some *qazis* were known for their honesty. 'Abdul Wahab's predecessor had the courage to refuse the proclamation of Aurangzeb to the throne while Shahajahan was still alive for which he was removed from his post.¹⁴⁵ Sheikh-ul-Islam, son and successor of 'Abdul Wahab, was the rare example of an honest *qazi*. He showed no concern for the ill-gotten money of his father rather he gave away his own share of it in charity. He avoided corrupt practices to such an extent that he refused to accept even the customary presents and gifts from his nearest relations and friends.¹⁴⁶

Muftis : The *qazis* were to be assisted by the *Muftis*. The *muftis* were those who gave the *fatwa* by a judicial consultation based on one or more precedents. The *muftis* expounded the law and supplied the *qazi* with fatwas or decisions.¹⁴⁷ As their usual counsellors were inefficient, the *qazi* and most Muslims with them, had recourse to a few men who enjoyed a reputation for learning, and who gave legal consultations. (*fatwa*)—Those givers of *fatwa*, those *muftis*, became, by princely decisions, official interpreters of the canon law.¹⁴⁸ A *mufti* must be acquainted with the *Qur'an*, the *Summa*, *Ijma* and *Qiyas*. He must be learned in *Hadis* and in the Muslim works of law besides the *Qur'an*.¹⁴⁹ He must be a Muslim, chaste and intelligent.¹⁵⁰

Although the office of the *mufti* carried with it no salary, the *muftis* exacted a fee for delivering *fatwa* proportionate to the wealth of the petitioner. This was supplemented by income from teaching or other minor religious offices in case of lesser *muftis*. The chief *muftis* in the Islamic countries were granted pensions and administrative posts.¹⁵¹

Position of the Qazi in Delhi Sultant

The office of *qazi* should not be bestowed upon one who aspires for it. This prohibition is based on the following example of the holy Prophet: Two persons approached and requested the Apostle of Allah to send them as governors to some places. He turned down their prayer saying, "We do not assign the authority of ruling to those who ask for it, nor to those who are keen to have it."¹⁵²

Selection to the post of a *qazi* was made by the Sultans of Delhi from among the *fuqaha* (professors of law). Once appointed, the *qazi* was treated with great respect and consideration; he could punish even the most powerful dignitaries of the empire.¹⁵³ He was expected not to entertain parties or accept gifts from strangers.¹⁵⁴ There were other similar restrictions, and there was also the risk of incurring the Sultan's displeasure.¹⁵⁵ It was not wonder that the *qazi's* office was accepted with fear and reluctance in the early days of the Sultanate, when strict obedience to both the letter and spirit of the law was generally enforced.¹⁵⁶ There is an interesting case of Sharaf Jahan, chief *qazi* of Daulatabad, under Sultan 'Alauddin Khalji, being dismissed from office, because he had become unpopular with the people of that city. It appears from Ibn Battuta's account that Sharaf Jahan was a man of sterling character and free from corruption. It was (probably) because he was too honest and strict in dispensing justice that representations were made to the Sultan to dismiss him, and he was dismissed. After he was removed from office, one of his many enemies, that he had created during his tenure as chief *qazi*, filed a suit against him for ten thousand *dinars* in his successor's court. Since the plaintiff had no document or witness to support his claim, the presiding *qazi* sent for Sharaf Jahan to appear and swear before him to deny the charge. Instead of going and taking an oath of denial in the court, Sharaf Jahan sent ten thousand *dinars* to the *qazi* to be made over to the complainant. When the story of the case was reported to the Sultan at Delhi, he felt that the case had not been looked into, and disposed of, properly. He ordered the *qazi-i-suba* of Daulatabad to reopen the case and make a thorough inquiry into the truth or otherwise of the claim of the person who had earlier been paid ten thousand *dinars* by Sharaf Jahan. It was revealed during the subsequent investigations that the claim of the plaintiff was baseless; Sharaf Jahan had preferred to part with ten thousand *dinars* to the alternative of taking an oath of denial, out of piety. The Sultan was highly pleased with the high standard of Sharaf Jahan's character: he restored him to his old post and also sent him ten thousand *dinars* as a token of his regards for him.¹⁵⁷

Sometimes the Sultans appointed some scholars as *qazi-ul-quzat*, who were not considered to be men of integrity, but had great influence with the people for their learning.¹⁵⁸ Sultan Balban once lamented, "I have got three *qazis*, one of them is such that he does not fear me but is afraid of God; the other *qazi* does not fear God but me; while the third fears neither me nor God."¹⁵⁹ The third *qazi* was Minhajuddin Siraj, the author of the *Tabaqat-i-Nasiri*.¹⁶⁰

The appointments and jurisdictions of the *qazis* were to be made known to the people so that they should submit to their orders. Temporary appointments and special tribunals, when created, were similarly gazetted. The powers and functions of the *qazi's* court had to be obeyed. He could declare a king's order illegal.¹⁶¹

The people and the monarch alike turned to the *qazi-ul-quzat* in times of trouble. The *qazis* were enjoined to think of God alone in deciding cases.

The law applied equally to all; officers of rank were treated like ordinary citizens in personal disputes. Their official position gave them no immunity from the rigour of the law. Hazrat Umar bin Khattab had allowed his officials no special privileges in matter of justice. The Sultans of Dehli followed the same course. The Muslim criminal law not favour any distinction between the ruler and the ruled.

Jurisdiction: Qazis, to whatever office appointed, were enjoined to be watchful of their jurisdiction and not to exceed it. They could try only such cases as were specified in their letters of appointment. The Sultan, the *qazi-ul-quzat*, the provincial governor within his province, and the provincial chief *qazi* alone had inherent jurisdiction in civil and criminal cases.

A *qazi* could not decide suits in which he was personally interested. Emphasis was laid on the trial of cases on the spot, if possible. A *qazi* was not debarred from trying a criminal case because he was an eye-witness to it. If a plaintiff resided in the cantonment area and the defendant in the civil, a *qazi-i askar* had to be empowered to try that case whereas the *qazi* of the civil area could settle the dispute without being

so empowered.

Other Officers: The *qazi* was assisted in his work by a *mufti*/the latter was a jurist who expounded and applied the law to cases.¹⁶² The *mufti* did not possess the *qazil*'s powers, but his opinion on a law point could not be ignored; if the *qazi* disagreed with him, reference to a higher court was necessary.

Another officer attached to the *qazi*'s court was the *mufti-i-diwan-i-siyasat*. His duty comprised superintending the execution of sentences passed by the *qazil*'s court.¹⁶³

Another important officer associated with the *qazi*'s court was the *mir-i-dad*. His duty was to present before the *qazi* a any big *amir* or noble against whom a complaint was instituted, but who proved recalcitrant and refused to comply.¹⁶⁴ Under Sultan Muhammad bin Tughluq, his brother, Mubarak Khan, occupied the office of the *mis-i-dad*. His salary was fixed at fifty thousand a year and he was granted a *jagir* which yielded a corresponding income.¹⁶⁵ It was with a view to secure fearless and independent discharge of duty that the office of the *mir-i-dad* was created.

Prosecutors: In offence against religion, the *muhtasib* was the prosecutor, "He was entrusted with the job of suppressing illegal practices and punishing the wrongdoers; he was regarded as the defender of public decency and the protector of the rights of the weak against the strong."¹⁶⁶ He possessed the spontaneous powers of intervention and was responsible for the smooth running of civil life in the city. An important function, included in the duties of the *muhtasib*, was to maintain purity of Islamic doctrine and discourage heresy. He, therefore, kept a watchful eye on the preachers and pedagogues. He was the chief custodian of public morals and inquired into the conduct of the people.¹⁶⁷

In other State prosecutions, the *kotwal* had this duty, or the *faujdar* in places where there was a *fauadar*, but no *kotwal*. *Shiqdars* also could report to the *qazis* for cognisance of cases in their *parganas*.

Extra-judicial Inquiries: Courts were not debarred from making extra-judicial inquiries, whether direct or through an

agent. Such inquiries were encouraged by some Sultans. The practice seems to have been started by the Abbasids and was emulated by the Sultans of Delhi.

Judgement in Court: Judgement was pronounced in the open court, unless the accused, in a criminal proceeding, was considered so dangerously influential that a public trial was against the interest of the State. The courts were enjoined to write their judgment carefully.

Compromise Permitted: According to the *Fiqh-i-Firoz Shahi*, the parties in a criminal case could compromise, only if the accused was under the custody of the court, lest a compromise should be exated from him under duress. For the same reason, no weight was given to confession made to the police.

Execution of Sentences: An accused found guilty and sentenced to imprisonment was handed over to the custody of the *kotwal*, who was responsible for seeing that the sentence was carried out in the jail,¹⁶⁸ of which he was in charge. Fine imposed in *ta'zir* cases was also realized by the police under the command of the *kotwal* or the *shiqdar*. Discretionary punishments prescribed by the ruler for such offences for which the *Qur'an* and the *sunnah* have not suggested or enjoined any specific punishment. In *ta'zir* an offender may be fined, given a certain number of strokes, exiled or imprisoned for some duration, but never subjected to capital punishment.

For the purpose of execution of death sentences, executioners were appointed by the State to behead the condemned prisoners, or to flay them alive, as was ordered sometimes in the reign of Sultan Muhammad bin Tughluq.

Appeal to Higher Courts: The system of obtaining redress from a higher court existed. If any individual, dissatisfied with the decision of the district *qazi* passed in his case, appealed to the governor or the chief *qazi* of the province, the matter was revived and judgement awarded with great care, "lest it should be mentioned in the presence of the Sultan that justice had not been done." Even in the district court itself, the *qazi* could revise his own or his predecessor's judgement without any appeal being made to that effect.

Rule of Evidence: The Hanafi law, which was applied in India, classifies evidence in the following order of merit: (1) *Tawatur* or full corroboration,¹⁶⁹ (11) *Ahad* or testimony of a single person; and (111) *Iqrar* or admission, including confession.

The Muslim jurists have unanimously preferred *tawatur* to any other kind of evidence. The insistence on corroboration is probably based on the following injunctions in the *Qur'an*: "O" believers, shrink not the duty of giving evidence that is true for the sake of justice.¹⁷⁰ "Hide not testimony. He who hides it, verily his heart is sinful."¹⁷¹

Women could be competent witnesses, but two women were required to corroborate a fact for which the testimony of one man was sufficient.¹⁷² In cases where women possess special knowledge, the testimony of one woman was enough.¹⁷³

A blind man, a slave, and a slanderer were not eligible to give evidence.¹⁷⁴

Under the Sultans of Delhi, direct evidence was preferred to hearsay which, however, was not altogether excluded. It was admitted somewhat freely in cases before the *faujdar*, where the accused's previous record and his likelihood to disturb the peace were in question. The court take judicial notice of facts too-well-known to require proof. For a conviction of murder, rape or adultery, however, the evidence had to be especially convincing. This was due to the fact that punishments for these offences were very severe. A decree could be given on admission, provided it was unconditional. The admission of one co-accused was, however, not conclusive against another. A confession made under threat or inducement was inadmissible.¹⁷⁵

Position of the Qazi in Mughal India : Like other Muslim countries, the *qazi* held a prominent place in Mughal India as well. The *Chef Qazi* was appointed by the Emperor and he could appoint his subordinates. The practice of administering justice by the *qazis* was the same in the provinces as at the centre. In 1771, Aurangzeb learnt that the *qazis* of the province of Gujarat enjoyed holiday for three days in the week,

held their court for two days and on other two days attended the governor's *darbar*. A *farman* was issued to the Diwan of Gujarat that such a practice was contrary to the convention followed at the centre and in other provinces. The *qazis* were ordered to discontinue their previous practice and follow in line with others. They were ordered to have only Friday as holiday, to attend the governor's *darbar* on Wednesday and hold their court on all the other five days. The Emperor even fixed the timings of the court. The judges were required to sit in their courts for doing justice from two *gharis* after day-break to a little after midday and retire to their houses at the time of *zuhr* prayer.¹⁷⁶

Bernier lamented that the Indian judges were not armed with sufficient powers to redress the grievances of the oppressed subjects.¹⁷⁷ Cases of oppression of the subjects at the hands of the officials and of official corruption do not seem to have worried the *qazi* much. They had, however, their inalienable sphere of jurisdiction. All the cases that lay under canonical law were to come before the court of the *qazis*. Aurangzeb's *forman* of 1672 throws a flood of light on the working of the *qazi's* court. There were very few criminal cases which did not engage his attention, perhaps such as those where the criminals were an organized band of robbers or rebels. Against them large armies were sent and the punishment was inflicted at the hands of the royal generals or *faujdar*s. Otherwise, almost all other cases were to be tried in the *qazi's* court. The crime was to be established by him and the punishment to be carried in his presence. A crime could be established after legal evidence in the *qazi's* court. He was to inflict appropriate punishment on the robbers and highway robbers. He was to take cognizance of the offences of the adulterers and sodomists, courtesans and drinkers and apostates. He ordered the offenders requiring detention to be taken to the *chabutra* of the *kotwal* and sent for them when their cases were to be tried in his court.¹⁷⁸

Shar'i Vakils

Every *zamindar* and *mansabdar*, *faujdar* and commandant, used to have a *vakil*. These *vakils* represented their cases to

the Emperor. The princes royal also has their own *vakils*. There are constant references to the presence and function of these *vakils* in the News letters of Aurangzeb.

He had, moreover, ordered the appointment of *Shar i vakils* who sat with the *qazi* in his court. Khafi Khan has termed this as an evil which became current in the Mughal territories.¹⁷⁹

Vakils also used to appear in the *qazi's* court on behalf of the parties.¹⁸⁰

Officers and Holding of Courts

The Mughal Emperors were particular to see that the governors, *diwans* and other officers held their respective courts at fixed times and places. During Aurangzeb's stay at Burhanpur in September 1681, it was brought to his notice by Sayyid Sharf Khan Bayu that Mohammad Ali Khan, *Khan-i-Saman*, did not sit in the court (*addalat*) and did his office work in his house. The Emperor declared this to be irregular and ordered both Sharf Khan Bayutah and Mohammad Ali to do the office work in the court¹⁸¹ (*adalat*.)

On 12th June, 1693, it was reported that officers at Odni (renamed Intiazgarh) did office work sitting in their houses. An order was sent to Raja Anup Singh commandant and *faujdar* of the place, to do the office work sitting at one place and at the gate of his house.¹⁸²

A report was received from Hoshangabad on 17th May 1695, that Mohammad Khan Bijapuri, *faujdar* of the place, did not come from his house to offer Juma prayers; nor did he hold the court. Bahrahmand Khan, the Chief Bakshi, was asked to write to the said Khan that he must always be particular in holding the court.¹⁸³

On 23rd March, 1702, it was brought to the notice of Aurangzeb in the *Diwan-i-Mazalim* that a provincial *diwan*, Mir Kalan, was doing office work at his house. His plea was that he was not strong enough to come to the court. Ruhullah Khan, the Chief Bakshi, was ordered to write to the governor of the province in this connection.¹⁸⁴

Oath-taking

The found in Surat the prevalence of oath-taking in civil

cases. If a person sued another for debt, 'he must either shew an obligation, produce two witnesses, or take an oath.' A Christian swore upon the Bible, a Muslim upon the Holy *Qur'an*, and a Hindu upon a cow. The Hindus, however, avoided taking the oath. Most of them chose rather to lose their case than to swear, because they who swear are reckoned infamous among them'.¹⁸⁵

Trial by Ordeal

Trial by ordeal was common in civil and criminal cases in India. The common form was the ordeal by fire, but more common was ordeal by water. Thevenot found this sort of ordeal prevalent in Cochin. There was a small tank on the river side where crocodiles were kept. The accused was required to cross the tank on the back of a crocodile. If he was truthful, the crocodile brought him back safe. If he had told a lie, it carried him in the middle, took a dive under water with the man and drowned him. Thevenot had heard this story from the people though he did not find the crocodile in the tank during his visit to the place.¹⁸⁶

The penal code for the Hindus appears to have been the same as for the Muslims. In the villages, however, criminal as well as civil cases were decided by the village *panchayats* and also the revenue cases.

Sir Henry Eliot has given an apt description of the *Panch* and *Panchayat* courts as they existed before the introduction of the Indian Penal Code in 1861. That naturally may have been the continuation of the Mughal system of the rural administration in India. The learned author remarks that though the origins of the *Panchayat* are lost in antiquity, its popularity has remained unimpaired throughout the ages. The popular saying in India was (पंच में परमेश्वर) that is "in the *Panch* there is God." The *Panch* consisted of five persons, of the same village, or of the same caste and rank in life as the parties concerned. Prior to 1861, the district officers, particularly in the Punjab, utilized to a great extent and advantage, the institution of the *Panch* not only for criminal, but for civil and revenue suits. The plaintiff and the defendant named two men each, and exercised the right of challenging the other's nomi-

nees. "The magistrate or other presiding officer then chose a head or *sarpanch*; the point in dispute was clearly stated to the *panch*, all the necessary papers were handed over to them, and they were sworn to decide fairly and honestly, and to return a judgment in a certain number of days. The particular value of this mode of trial was that in intricate points of native customs, often depending upon a state of feeling which it was difficult for the English officer, as being a foreigner, to enter into, the members of the *panch* were thoroughly at home in their subject and were able to give due weight to a variety of minor considerations which none but a native could perfectly understand. Even in the older provinces, where the regulations are in force it is found at times convenient to have to this time-honoured method of decision, and the result is so satisfactory, that one is tempted to wish it were more largely resorted to."¹⁸⁷

Tavernier perhaps was referring to the administration of the *Panchayats* when he remarked: "In Asia, if justice be ever administered, it is among the lower classes, among persons who being equally poor, have no means of corrupting the judges."¹⁸⁸

Cases of the Foreigners

According to an agreement of 1618 between Prince Khurram, the Mughal Governor of Gujarat, and Sir Thomas Roe, the English Ambassador at Jahangir's court, the East India Company had been permitted to decide cases of dispute between the English themselves.¹⁸⁹

Nicholas Withington was accused of wronging the Company and was ordered to be brought in chains from Agra to Ajmer by two Englishmen and presented before Mr. Edwards, "our would-be ambassador."¹⁹⁰

Punishments: Muslim Law

According to Muslim law, there are two categories of crime. The first includes crimes of human and private nature and are subject to the law of talion and rension. In the second category are the crimes of theft, brigandage, extra-marital sexual relations, apostacy and wine drinking. In neither case will

the penalty wipe out the offence. It may, however, be expiated by a course of conduct *kaffara* which no earthly authority can enforce.¹⁹¹ In Muslim law, punishments are divided into *Hadd*, *Qisas*, *Daya* and *Ta'zir*.¹⁹²

Hadd : *Hadd* signified boundary or limit, barrier or obstruction. In the *Qur'an*, it is always found in plural, meaning the limits laid down by God, i. e. The provision of the Law.¹⁹³ *Hadd* is that punishment which has been exactly defined in the *Qur'an* or the Hadis by the Prophet.¹⁹⁴ This is an unalterable punishment prescribed by cannon law and is considered *haqq Allah* or right of God.¹⁹⁵

Under this category were included the crimes of adultery, fornication and false accusation of adultery (*qazf*), apostacy, drinking of wine, theft and highway robbery.¹⁹⁶

The *Qur'an* declares all extra-marital sexual relations to be criminal. For *muhsans* or adulterers who had lived in the bonds of legal matrimony, and for sodomists, lapidation was the punishment. For fornication (sexual relation between unmarried persons) the offender had to receive one hundred strokes of the whip.¹⁹⁷

In practice, however, the law *zina* could not be operative because it was not easy, as required by the *Qur'an*, to prove the charge. Four witnesses were required to give evidence that they were present when the act charged was committed and a false informer was liable to a penalty of hundred strokes of the whip himself.¹⁹⁸

The false accusation of a married person with adultery was known as *qazf* for which the offender was awarded eighty stripes.¹⁹⁹

For theft (*sariqah*) an offender had to lose his right hand, for robbery (*qatu'l-tariq*) both hands and feet, and for robbery with murder he was awarded death punishment.²⁰⁰

Although for apostacy no legal, *hadd* or *Qur'anic* punishment was prescribed, yet it was punished with death.²⁰¹ An apostate or *murtadd* could be excused if the crime was violently forced on him and he remained faithful at heart.²⁰²

Drinkings of wine was a crime meriting punishment.²⁰³ According to the Sunnites the offender was to receive eighty strokes of the whip and the Shi'ites prescribed forty.²⁰⁴ During the 'Abbasids, it was a favourite drink both at the court and in the city.' In the history of Muslim social life the campaign against wine is one of the repeated themes of reformers, who, in the name of the *hisba*, seek out the drinkers and break their jars.²⁰⁵

These offences being against God, the offender could hope for His mercy. The judges were advised to give every opportunity to the criminals to clear themselves and not to press them further if they could deny the deed and refute the accusation.²⁰⁶

Qisas: *Qisas* means retaliation. It was two kinds. *Qisas fi'l-nafs* or blood vengeance which is applied in cases of killing. The other is called as *Qisas fi-ma dun-al-nafs* and applied to cases which do not prove fatal.²⁰⁷

If a person committed a wilful murder or inflicted a wound which did not prove fatal, he was liable to *qisas* or retaliation. *Wali* or next-of-kin of the slain person, had the right to kill the offender under certain circumstances and under the supervision of the judge.²⁰⁸ The judge had to see that the slain person was not a descendant of the slayer and that the murderer was in full possession of his faculties and had reached the age of discretion. *Qisas* took place only if the next-of-kin demanded it. In case there are more than one claimant for the blood of the offender, all must be unanimous in their demand.²⁰⁹

Although the punishment was fixed by the law, it could be remitted by the person offended or by the heirs of the murdered person.²¹⁰

According to Abu Hanifa, the avenger of blood was allowed to behead the offender with the sword or a similar weapon. For slaying in another fashion, he was punished with *Ta'zir*. Al-Shafi'i and Malik advocated the killing of the murderer in the manner in which he had killed his victim.²¹¹

In occasions affecting life, retaliation is incurred by wil-

fully killing a person whose blood is under continual protection, such as a Muslim or a *zimmi*, in opposition to aliens who have an occasional or temporary protection. Abu Hanifa authorises the execution of a Muslim for the murder of a *zimmi*, although Shafi'i disputes his. A free man is slain for a free man and a slave for a slave. A man is slain for a woman, an adult for an infant, and a sound person for one who is blind, infirm, dismembered, lame or insane. A father is not to be slain for the murder of his child, but the child is slain for the murder of his parent. According to Abu Hanifa retaliation occurs if a man drowns another in water, though his two disciples do not agree with him.²¹²

No retaliation was to incur if any bone excepting the tooth was broken and in offences short of life between a man and a woman, a free person and a slave, or one slave and another slave.²¹³

In cases of retaliation short of life, a hand was cut off for a hand, a foot for a foot, a nose for a nose, and a tooth for a tooth.²¹⁴

If the murderer escaped death punishment at the hands of the avengers of blood, he had nevertheless to pay compensation or blood-money.²¹⁵

Diya : *Diya* means a sum extracted for any offence upon the person, in consideration for the claim of *Qisas*, or retaliation, not being insisted upon.²¹⁶ *Diya* or *Aql* was compensation paid by one who had committed homicide or wounded another.²¹⁷

In case the legal conditions necessary to render the *qisas* possible were not present, or when the heirs of murdered person entered into a composition with the murderer for a certain sum, retaliation was remitted for *diya* or blood-money.²¹⁸

The indemnity for the murder of a man was fixed by the Sunna at a hundred she-camels.²¹⁹ The camels were to be of definite condition and age, ranging from one to four years.²²⁰ The *diya* for a crime committed against a woman was half of that given for a man. The *diya* of a Jew or a Christian was one-third of a Muslim's.²²¹

There was no *diyya* for a minor or an insane person. The law of retaliation held good between slaves as between free persons.²²²

A Muslim was not to be put to death for an unbeliever unless he had killed him treacherously.²²³

Women and children were not liable to pay *diyya*.²²⁴

There was a complete fine for the destruction of a nose, or a tongue, or a virile member or for tearing out the beard, for eyes and lips, and for destroying the beauty of a man's person.²²⁵

Ta'zir : Literally *ta'zir* means 'to censure or repel'. This punishment, intended to reform the culprit (*li'l-tashhir*), was not known to the Qur'an and found its way into Muslim law at a comparatively later date.²²⁶ According to *fiqh*-books, *ta'zir* was inflicted for such offences which had no *hadd* punishment or *kaffara* prescribed for 'hem, whether it was a question of disobedience of God or of crime against man.²²⁷

The main object of this punishment being reformation, the degree of punishment varied with the social status of the accused.²²⁸ According to one writer, men were classified systematically for his purpose: 'In the case of great men and notabilities it was a discreet warning uttered by a delegate of the *quzi*: *fuqha* and such-like were called into his presence and admonished/ merchants went to prison, and the common people received the lash.²²⁹

While awarding punishment for this crime, the judge exercised his own discretion. It could be anything from a public reprimand to whipping or banishment. In case of the divine law he could even remit the *ta'zir*, but not in case of crime against man.²³⁰

Personal confession by the offender or the evidence by two witnesses could be sufficient ground for awarding the punishment.²³¹

This punishment left vast discretion in the hands of the *qazis* and provided opportunity to the offenders to win them over by bribery. In order to curtail the powers of the judges,

Muslim rulers devised ways to lay down definite punishments for a series of offences.²³²

Mughal Practice

In Mughal India provincial governors and other executive officers were not allowed to inflict capital punishment in an arbitrary manner. A *farman* of Akbar in 1582 forbade the provincial governors to award death punishment without his permission,²³³ although Manucci observes that the governor was empowered to confirm death sentence.²³⁴ When Akbar himself acted as a judge, the guilty was given death penalty only when the order had been issued for the third time.²³⁵ By an order of Jahangir no person against whom death sentence had been pronounced, was to be executed, until sunset. Jahangir once issued orders for the remission of capital punishment of an offender, but before the second and revised orders reached, the criminal had already been executed. It was to avoid the repetition of such an incident that he felt the necessity of giving the above orders.²³⁶ Jahangir had reserved to himself the authority of awarding the capital punishment. Making of eunuchs was declared by him a capital offence.²³⁷

Thevenot, who visited India in 1666 observed that no civil or criminal judge was authorized to put any offender to death. That power was reserved by the king to himself. The case of criminal deserving death was referred to the king through a special messenger and the punishment was executed only on receipt of his confirmation.²³⁸ This is fully confirmed by Ovington (138) and Mirati-Ahamadi (op. cit. Saran p. 388).

Death penalty could be inflicted by hanging, beheading, and impaling. Execution could take place by throwing a man down from the roof.²³⁹ Another common method was to get the criminals trampled under the feet of elephants. Shahajahan kept an official with several baskets full of poisonous snakes for punishing the guilty.²⁴⁰ Terry asserts that, among other forms of punishment, malefactors were stung to death by snakes.²⁴¹ He has quoted an instance of the punishment having been inflicted for matricide while he was at Ahamdabad. Jahangir had been much troubled about making the punishment fit the crime.²⁴² Yet another method was to get the crimi-

nal torn to pieces by dogs. Da'ud Khan, the commadant of Vellore fortress, once ordered that all the thieves caught in the army should be thrown to the crocodiles in the ditch round the fortress.²⁴³ As the Deputy Governor of Carnatic, he kept ferocious Persian dogs which could tear off the criminal to pieces.²⁴⁴

Kokla Jat and his companion were executed at the *Ch-abutra Kotwali* and their bodies were cut to pieces.²⁴⁵

Sambhaji and his companion were given the most cruel punishment under Aurangzeb's orders. Their tongues and eyes were pulled out and they were put to death along with ten other associates with utmost torture. The dead bodies and skulls of Sambha and his companion Kab Kalas were stuffed with grass and paraded through important towns and cities of the Deccan.²⁴⁶

Impalement was yet another form of punishment. Jahangir had inflicted it on the accomplices of Khusrow in 1606 after his abortive rebellion.

Sometime an imperial officer abused his authority and inflicted a most cruel sort of death penalty. A rare ape in the possession of Da'ud Khan, the deputy Governor of Carnatic, died on account of the neglect of the servant. Da'ud Khan became furious, caused the servant to be put to death by driving a stake into his anus until it came out at his neck.²⁴⁷

Other forms of punishment were mutilation, flogging, banishment, imprisonment, fines and confiscations, forfeiture of rank and title, forbidding the court and dismissals.

Mutilation was also one of the penalties in Mughal India particularly for notorious and habitual robbers and rebels. The Bihar Governor Afzal Khan defeated the rebel *faqir* who had assumed the name of Khusrow, captured him and then tore him to pieces limb by limb. By this he earned the displeasure of Jahangir. He disapproved the death penalty of a man, who, though a rebel, had expressed filial relationship with the Emperor.²⁴⁸

As mentioned elsewhere in this book, Jahangir while staying in Ahmadabad, had ordered the thumbs of the servant of

Muqarrab Khan, the Governor, to be cut off. His fault may not seem very serious to us. He had simply cut down some *Champa* trees alongside the river!²⁴⁹ In the beginning of his reign Jahangir had forbidden the cutting of the noses or ears of any person.²⁵⁰

The French traveller of Qurangzeb's reign, Thevenot, is of the opinion that 'the custom in most countries of the India's in mutilation of both the hands for theft.²⁵¹ A *qazi* of Aurangzeb's is said to have remarked: "In the department of justice, I award some people in accordance with Shari 'law the punishment of retaliation and on others I inflict the punishment of amputation of hand and other forms of chastisement."²⁵²

Banishment to Mecca, Bhakkar and Bengal was a usual form of punishment in Mughal India. Humayun had punished both 'Askari and Kamran by ordering them as exiles to the Holy city of Mecca. In Akbar's time the same punishment was meted out to a number of persons including Bairam Khan and Mulla Pir Mohammad Sherwani, though in their case it was not implemented.

When the Hindus of Thanesar complained to Akbar against Haji Sultan for his offence of cow-slaughter, he was banished to Bhakkar.²⁵³

The same punishment was meted out to Sheikh Husain, grandson of Khwaja Muin-ud-din of Amer, for his unbecoming behaviour.²⁵⁴

When it was discovered that several officers had not maintained the required number of troops after the passing of branding regulation, Akbar punished them by transferring them to Bengal.²⁵⁵

Shahjahan once ordered the banishment of an ordinary soldier when he wrongfully usurped the wife of a Hindu clerk.²⁵⁶

Imprisonment

Although imprisonment was a very usual form of punishment in Mughal India, there were no specific rules fixed

for it. That must have gone hard for the majority of prisoners. There used to be three 'noble-prisons or castles' in Mughal India. One was at Gwalior, second at Ranthambor and the third at Rohtas. Criminals condemned to death punishment were usually sent to the fort of Ranthambore. They met their death two months after their arrival there. The 'governor then bringing them to the top of the wall and giving them a dish of milk, which having drunk, he is caste down thence on the rocks.²⁵⁷ To this place 'are sent traitors who are condemned to die. They make them drink a great quantity of milk and throw them down from the top of the castle upon the declining side of the hill, which is full of sharp pointed craggy stones, that tear the bodies of the wretches, before they can reach the bottom of the precipice.²⁵⁸

The Gwalior fort was reserved for the 'nobles that offend'. To Rohtas were sent those nobles who were condemned to perpetual imprisonment, from whence 'very few return home'. Princes of royal blood were often sent to this sent to this place.²⁵⁹

Occasionally, the prisoners were transferred from one place to another. On 27th October, 16, a *farman* was issued through Siadat Khan in the name of Shuja'at Beg, the *faujdar* and commandant of Asirgarh, to the effect that prisoners there be transferred to the fortress of Gwalior.²⁶⁰

According to Muslim law, the *qazis* were supposed to visit the prisons and inquire into the conditions there, and release those who showed signs of repentance. Usually, however, they neglected their duty. The only redeeming feature for the prisoners was that orders for their release were issued on special occasions. These occasions were birth of a crown prince, recovery of the Emperor or any of his sons from long illness, or some occasional royal visit to a prison fortress. On the birth of Prince Salim, Akbar ordered that all the prisoners in the imperial dominions who were confined in the fortresses for 'great accounts' were to be released.²⁶¹

Soon after his accession, Jahangir ordered the release of all those persons who had been imprisoned for a long time in the forts.²⁶² In 1610, he released some of the prisoners in the

Gwalior fortress.²⁶³ Six years later while he happened to pass by the fort of Ranthambor, he decreed that some of the prisoners confined there be set free.²⁶⁴ In 1618, he inspected the condition of the prisoners in that fortress. The persons confined there were produced before him to enable him to look into all individual cases. With the exception of those who had been convicted of serious crimes like homicide, he freed them all and to 'each one in accordance with his circumstances gave his expenses and dress of honour.'²⁶⁵

Shahjahan had issued standing instructions that whenever he passed by a fort, the cases of the prisoners there should be brought to his notice. When in the beginning of his reign he visited the fort of Gwalior, he ordered the release of all the prisoners there excepting those accused of very serious charges.²⁶⁶ In the eleventh year of his reign when he again happened to pass by that fort, he inspected the cases of the prisoners there, found only eleven with sentences of long duration and set them free.²⁶⁷

On the occasion of the celebrations of recovery from illness of the favourite princess, Begum Shib, Shahjahan ordered the release of prisoners in 1638.²⁶⁸

Mehdi Khan, commandant of the Sholapur fortress, sent Aurangzeb a message through Khawaja Yaqut, the royal Superintendent of Gardens, that no body had cared to inquire into the conditions of the prisoners kept there. The Emperor ordered the *Darogha* to inquire and report.²⁶⁹ In 1703, Aurangzeb ordered the release of all the prisoners there excepting one *faqir*.²⁷⁰

Writing about Golconda that lay outside the Mughal dominions in September 1652, Tavernier records that it was the custom in that country not to keep a man in prison; 'but immediately the accused is taken, he is examined and sentence is pronounced on him, which is then executed without any delay.'²⁷¹

When prisoners were taken to the prison, they were usually 'loaded with iron fetters on their feet and shackles on their necks.'²⁷²

For temporary confinement, there were police lock-ups in the cities termed as *Chabutra-i-kotwali*. There are frequent references in the News Letters of Aurangzed about the confinement of thieves, robbers and even guilty officers in these lock-ups. The officer-in-charge of the *Chabutra-i-kotwali* used to be the Mushrif. There is a reference in a news-letter to the death of Bhadur Singh Mushrif of *Chabutra-i-kotwali*, in November, 1693.²⁷³

One redeeming feature for the prisoners was the possibility of their release on bail.

Mohammad Amin Khan, the governor of Lahore, put Manucci in prison on a made-up case of theft. The governor-designate, Fidai Khan, issued orders for his release. Manucci was told by the *kotwal* that in spite of the orders, he was required to produce bail in accordance with the provisions of the law.²⁷⁴

When Manrique was arrested, his release was secured by a Muslim merchant of Midnapur on furnishing bail.²⁷⁵

Tapidas, an employee of Ruhulla Khan, had been placed in custody for having furnished surety for Ganga Ram, the *mutasaddi* of Khan Jahan Bahadur, who had disappeared. On 11th August, 1681, Tapidas petitioned the Emperor through Asad Khan that it was not possible for him to trace and produce Ganga Ram while he himself continued in the lock-up. He would be able to go in for search only if he were set free. The Emperor agreed to release him in case he gave a security. Ten days later Ruhulla Khan submitted that Tapidas had given an undertaking for the repayment of the entire amount due from Ganga Ram. The Emperor asked for a written bond, which Tapidas refused to give. So he had again to go back to jail.²⁷⁶

The Emperor accepted on 25th October, 1693, the surety of Mohammad Badi Balkhi for Mohammad Ashraf, son of Khushal Beg, detained in Bijapur.²⁷⁷

Gobind Rai had been imprisoned at the *Chabutra kotwali* on charge of forgery. He represented to the Emperor in writing that he was innocent and should therefore be released.

His release was ordered on condition he produced a security.²⁷⁸

Nasrull Khan, governor of the province and commandant of the fortress of Bijapur, had been ordered to send to the court Rahmdad prisoner. He reached there on 30th July, 1694. The Emperor ordered that he could be released in case he furnished a security.²⁷⁹

Bakht Buland, the *zamindar* of Deogarh, had been dismissed and confined at the *chabutra kotwali*. The Emperor decreed that if the accused could give a trust-worthy surety, he be removed from the *chabutra kotwali*, handed over to Bahramand Khan and paid an allowance of two rupees daily.²⁸⁰

On 2nd December, 1703, orders were issued for the release of Saifulla, zamindar of Rajorkah and confined in Haklobar, on condition that he gave a security.²⁸¹

Tashir was one of the punishments resorted to in ancient and continued in Mughal India. This punishment is mentioned in the Institutes of Manu. The guilty (Woman) was mounted on an ass and paraded through the public streets. In Muslim history, Caliph 'Umr had inflicted *tashir* on a false witness in addition to the award of forty stripes. In Muslim history in India, it was first inflicted on Saif-ud-din Ghorī. His face was blackened and he was seated astride on a bullock with his face towards the tail. He had to endure the insults of the mob, was then tortured and finally beheaded.²⁸²

This punishment was inflicted on the offenders in Mughal India too. After the unsuccessful revolt of Khusrow in 1606, his two associates, Hussain Beg and Abdur Rahim, were sewn in skins of an ox and ass respectively, with horns obtruding. They were seated on asses with faces turned to the tail and paraded through the streets of Lahore.²⁸³

In 1607, another plot was engineered by Khusrow's partisans to kill Jahangir. It proved abortive, however. One of the ring-leaders, Abdul Fateh, was seated on an ass with his face turned to the tail and paraded from place to place.²⁸⁴

Imperial officers, Sheikh Banarsi and Gias Zain Khan, who had failed in their duty to suppress the revolt of Qutb in

Patna at that time, were summoned to the court be Jahangir. Their heads and beards were shaved off, they were dressed in female attire, mounted on asses and paraded through the streets of Agra as a warning and example to all.²⁶⁵

Prince Shah 'Alam inflicted this punishment on a woman in Ujjain for giving a false information about a hidden treasure. He ordered to tear her robe to pieces, mount her on an ass with her face to its tail and parade her through the city. She was then flogged and afterwards released.²⁶⁶

This punishment was prevalent in other places also. Thevenot was an eye-witness of this in Qandhar. The people of Qandhar, though great lovers of wine, were prohibited from drinking. 'If a Moore who hath drank wine, commit any scandal, he is set upon an ass, with his face to the tail, and led about the town, attended by the officers of the Cotoual, who beat a little drum, and they are followed by all the children (or the neighbourhood) who hoop and hallow after them.'²⁶⁷

Maintenance of Law and Order

The maintenance of law and order was the responsibility of the governor in the province, of *faujdar* in the district, *thanedar* in the sub-division and the *kotwal* in the cities.

Governor : The governor was known as the *subedar* or the *tarafdar*. It was his duty to see that the strong did not oppress the weak. He was required to punish the refractory *zamindars* and lawless elements, and keep the robbers in prison.²⁶⁸

Akbar issued a *farman* laying down the duties of the *subedars*.

Faujdar : The *faujdar* was in-charge of law and order in the district of *sarkar*. He was to control the rebellious *zamindars* by a conciliatory policy or overawe them by a show of military force. He was required to destroy their forts.²⁶⁹

Thanedar : In the sub-division of the district the *thanedar* was responsible for the maintenance of law and order.

Kotwal : The *kotwal* was the chief of the city police. In order to guard against unlawful occurrences, the *kotwal* was

to appoint watchmen in every *mohalla* in the city. The watchmen had to be on duty for the whole night and were required to apprehend thieves and evil-doers. Watchmen were to be appointed at places of entertainment to guard against pick-pockets. The *kotwal* himself was to patrol the streets and lanes and round up the thieves.

The *kotwal* was required to take bonds from the professional women, dancing girls and liquor vendors for good conduct and fine them in case they broke the bond.

Abul Fazal has given a detailed description of the duties of an ideal *kotwal* in the *Ain* (ii, pp. 41-43). Akbar's famous *farman* given in the *Mirat-i-Ahmadi*, throws a flood of light on the duties of the *kotwal*.

The *kotwal* with the help of the clerks was to make a list of the houses and buildings of every city, town and village in his jurisdiction and take the census of the residents of each *mohalla* (ward), and of their professions and vocations. He was to appoint a headman (*mir-i-mohall*) who was to act as a spy and informer. In order to guard against possible thefts, the house-holders, while going out, had to inform the *mir-i-mohalla* and their own neighbours. It was the duty of the headman and the watchman not to allow unauthorised persons to enter the *mohalla*, but to keep them separately in the inn. They had to keep strict watch on the entry of thieves and pick-pockets. In case of a theft, it was their responsibility to produce the thief and the stolen property.

The *kotwal* was to award suitable punishments on those who were found guilty of brewing, drinking and selling wine. He was to receive the reports of the arrival of guests or kinsmen in the *mohalla*. He was to keep himself informed of the income and expenses of every man in the city and to fix the prices of articles and take steps against hoardings.²⁹⁰ If any person earned money in an irregular manner, the *kotwal* was to report the matter to the Emperor. The headman of the *mohalla* was to inform the *kotwal* of marriages and feasts, births and deaths in his ward. Trustworthy informers in the streets and *bazars* and on the fords of the rivers had to keep him informed of the occurrences. Thus the main duty of the

kotwal was to keep law and order with the help of armed horsemen and foot-soldiers, to prevent thefts and to take steps against thieves, drinkers and public women, to apprehend the criminals, to arrest, imprison and even flog the house-breakers and to perform rounds in the night.²⁹² He was to be answerable for the theft in his jurisdiction and was required to make compensation for the loss. Manucci has referred to the *kotwal's* court as well.²⁹³

References

1. Fakhar-i-Mudabbir quoted by I.H. Qureshi in his *Administration of the Sultanate of Delhi*, p. 47.
2. Quoted by Nizamul Mulk in his *Book of Government*, p. 12.
3. 'Islami (p.101): *Dar-i-luft bar ahi-i-darish Kushad, Kasei ra zi yak lak diram kam na dad.*
(Substance: The door of his generosity was wide-open to men of learning and wisdom, and one received less than a lakh of *dirams* from him.)
4. *Taj-ul-ma asir*, f.151a.
5. *Tarikh-i-Fakhruddin Mubarak Shah*, p. 33.
6. Elliot & Dowson, vol. 11, pp. 298-99.
7. Is ami (p.116): *Hami kard dar adl-o-ihsan shuru'*
Ki agah bud az usul-o-furu'
(Substance : Being himself well-versed in the fundamentals and auxiliaries of Islamic law, he was able to extend his benevolence and evenhanded justice to one and all.)
8. Revert, vol. 1, pp. 597-99; Islami, pp. 108-16.
9. *Ibid.*
10. *Rehla*, p. 33.
11. Revert, vol. 1, p. 637.
12. Islami, p. 139.
13. He was the son of Ruknuddin Firoz Shah.
14. Islami, p. 139.
15. Raverty, vol. 1, p. 674; Islami, pp. 10-51.
16. 'Islami, pp. 151-52; Elliot & Dowson, vol. 11, pp. 345-46.
17. Barani, pp. 44-45.
18. op. cit., 40; Islami (p. 159): *Ba ahdash jahan rahi-i-bidad bast, Ba daurash zaman pai zalim shikast.*

(Substance: In his age of benevolence tyranny and the tyrant both disappeared.)

19. Barani, pp. 40-41; Elliot & Dowson, vol. 111, p. 101,

20. *Ibid.*

21. *Rehla*, p. 36. Barani (p. 122) confirms Ibn Battuta in stating that the house in which Sultan Chūyasuddin Balban was buried was called *dar-ul-aman*.

22. Elliot & Dowson, vol. 111, p. 136. 'Isami says of him:

*Shahi bud al-haq halim-o-karim,
Mizajash ba dad-o-dihash mustaqim.
Daran haft sali ki-o-mulk rand,
Yaki khatin azorda as wai na mand.*

(Substance : He was a monarch of generous and forgiving nature; during the seven years of his reign, no one had any occasion to feel unhappy with him.)

Amir Khusrāu (in *Miftah-ul-Futuh*, p. 7) pays his tribute to the Sultan in tense words :

*Ra'aya ra nighban-i-jahan kard,
Karani ra ba siyasat kamran kard.
Bi'adl arayish-i-nau bast din ra,
Nawazish besh kard ahl-i-zamin ra
Nezar bar zir dastan an chuman dasht,
Ki natuwan shukr anra bar zaban dasht.*

(Substance : He looked after his subjects generously; at the same time he did not spare the guilty. He enhanced the elegance of Islam by his evenhanded justice and countless acts of benevolence to the down-trodden. It is not possible to express in words one's gratitude for all his bounties.)

23. Barani, pp. 197-99.

24. *Ibid.*, p. 189.

25. *Ibid.*, pp. 194-95.

26. Barani, pp. 181-86; *Tabaqat-i-Akbari* (Eng. Trans.), vol. 1, pp. 134-36.

27. His *wazir* was Khwaja Khatir, the chief *qazi*, Ziya'uddin Sawi; the *Kotwal* of the capital, Malik-ul-Umara Fakhruddin. They were all renowned administrators and were regarded highly for their integrity of character; Barani, p. 177.

28. *Ibid.*, p. 177.

29. 'Isami, pp. 292-93.

30. To him, for example, belongs the credit of being the first Turkish Sultan of Delhi to reform the revenue rules and regulations and introduce the system of measurement as a preliminary to fixing the State demand of the produce of the soil. He was, again, the first to

revolutionize the conservative branch of revenue administration by the successful policy of putting an end to the privileges of the hereditary revenue officers and assignees of land. His successful control of the market and the tariff system had no parallel before or after him throughout the medieval period of India's history.

31. 'Isami (p. 240):

*Zi adlash biyasud dishqan-i-pir.
Zi ihsand-i-o gashita qaht-i-faqir.*

(Substance: His justice brought relief to the old and weak peasant, and his benevolence banished poverty from the land.)

32. 'Isami, p. 304.
33. Barani, pp. 295-96; Fuller & Khallaque, pp. 89-90; Elliot & Dowson, vol. 111, p. 188.
34. Barani, pp. 324, 340; Fuller & Khallaque, pp. 147-48; Elliot & Dowson, vol. 111, p. 206.
35. Barani, pp. 426-28, 440-41; Elliot & Dowson, Vol. 111, pp. 229-30.
36. *op. cit.*, p. 429.
37. *Rehla*, p. 50.
38. *Rehla*, p. 83.
39. *Ibid.*
40. *Rehla*, p. 83.
41. *Sunan Abu Dawud*, vol. 3, p. 1273.
42. A great many men must have been denied justice in this system of checks and counter-checks, but it does illustrate the Sultan's solicitude for justice and his readiness to redress grievances.
43. *Rehla*, p. 84.
44. A Fourteenth Century Arab Account of India under Muhammad bin Tughliq, 9. 54.
45. *Ibid.*, 84.
46. Afif, p. 47; Elliot & Dowson, vol. 11, p. 277.
47. *Futuh-at-i-Firuz Shahi*, p. 3.
48. *op. cit.*, p. 4 *Makosh andar an kaz tone khun rawad,
Ki jan baz nayad chun berun rawad.*
49. 'Afif, p. 74; Elliot & Dowson, vol. 111, p. 285.
50. 'Afif, p. 104; Elliot & Dowson, vol. 111, p. 290-92.
51. *Ibid.*
52. 'Afif, pp. 474-92.
53. *Ebid.*, p. 25, 503.

54. *Futuh-i-Firaz Shaki*, p. 2.
55. Briggs, vol. 1., p. 297.
56. Briggs, vol. 1, p. 309.
58. *The first Afghan Empire in India*, p. 80.
59. *Tarikh-i-Dawudi*, pp. 10-11; Briggs, vol. 1, p. 328; CHI, vol. 111, p. 228.
60. *Tarikh-i-Dawudi*, p. 35.
61. *op. cit.*, p. 44; Habib & Nizami, p. 699.
62. *op. cit.*, p. 44.
63. *op. cit.*, p. 36; *Makhzan-i-Afghani*, p.xcxcv; Habib & Nizami, p. 699.
64. He was the third son of Sultan Bahlul Lodi; Barbak Shah was his title; his real name was Fath Khan: *Tarikh-i-Dawudi*, p. 12.
65. Literally this means one who is free of all cares of this world and the next. Technically speaking, the *galandars* formed a mystic sect, who shaved off their heads, eyebrows, mustaches and beards. They did not wear the traditional mystic dress (*khirqā*), but wrapped themselves with blankets and fastened either a piece of blanket or a small sheet of cotton round the lion. They refused to conform to any established tradition or convention of society or law of religion: *Some Aspects of Religion and Politics in India during the Thirteenth Century*, p. 295.
66. *Tarikh-i-Dawudi*, p. 45.
67. *op. cit.*, p. 36.
68. Briggs, vol. 1, p. 343; CHI, vol. 11, p. 246.
69. *The first Afghan Empire in India*, pp. 212-14; *History of the Lodi Sultans of Delhi and Agra*, pp. 193-98.
70. *Islamic Society and The West*, Vol. II, pt. II. p. 116.
71. De Lact, p. 93; *The Embassy*, pp. 89, 104, 435; *English Factories, 1618-21*, pp. 14-15.
72. *Akbar Nama*, III, p. 717, Bev. III, p. 373.
73. *Ibid*, Bev. III, p. 1069; Text, III, 717.
74. *The embassy*, p. 87; De Leat, p. 93; *Early Travels*, Hawkins, p. 116; Finch, p. 184.
75. *Mughal Administration*, 4th Ed., p. 94.
76. *Akbar Nama*. III, p. 257, Bev, III, p. 373.
77. Monserrate, pp. 209-12.
78. *Ibid*.
79. *Early Travels in India*, p. 115.
80. *Ibid.*, p. 225.
81. *Early Travels*, p. 326.

82. *Ibid.*, pp. 115-16.
83. *Ibid.*, pp. 184-85.
84. *Ibid.*, (William Hawkins), p. 113;
(William Finch) pp. 184;
(Nicholas Withington) p. 226; Manucci I, p. 174.
85. Manucci, I, p. 167.
86. *Ibid.*, II, p. 260.
87. *Ibid.*, II, p. 261.
88. *Ibid.*, II, p. 262.
89. Akbar Nama. III, 88; Bev. II, p. 124;
Tabqat, II, 285 ; De, pp. 436-38.
90. Tuzk, II; p. 214 ; Bev , II, pp. 13-14.
91. Bernier : Travels in the Mughal Empire (Constable), p. 360.
92. Eliot and Dowson. VII. pp. 172-73.
Studies in Aurangzeb's Reign, p. II.
Mughal Administration. 4th ed. p. 94.
Early Travels in India, Edward Terry. p. 326.
93. Bernier, I. p. 263;
Manucci, II. p. 462.
94. Early Travels, p. 326.
95. Mirat-i Ahmadi, I, p. 275.
96. *Ibid*, pp. 279-80.
97. Manucci, II, pp. 461-62.
English Factories, 1637-41, p. 61, Marshall, p. 39.
Ibid., 1656-60, p. 513, *Ibid.*, 1670-77, p. 255.
98. Mirat-i-Ahmadi, I, p. 282.
99. Bernier, I, p. 268.
100. Thevenot, III, p. 35.
101. Mirat-i-Ahmadi I, p. 282.
102. Mirat-i-Ahmadi, I, pp. 168-69.
103. Chabutra was a raised platform, usually rectangular. The word is often used as meaning a 'court, judicial office'. Such courts were frequently held in the open air, the officer sitting on a square-shaped raised platform, (See Manrique, p. 424.)
104. Badauni, II, p. 390 ; Eng. Tr. (Lowe). II, p. 404;
Mirat-i-Ahmadi, pp. 282-283.
105. Manucci, I, p. 292.

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106. Jaipur Akhbarat, 49th year.
107. Mirat-i-Ahmadi, I, p. 257.
108. Dictionary of Islam, p. 479.
109. Islamic Society and the West. Vol. I, Pt. II, p. 125.
110. Hurgronje, Mohammadanism, p. III.
111. Muslim Institutions, p. 148.
112. Hurgronje, p. III.
113. Encyclopaedia of Islam, II, p. 606. See also Hedaya, p. 334.
114. *Ibid.*, Hurgronje, p. 111.
115. Muslim Institutions, p. 150.
116. Hurgronje, p. 111.
Muslim Institutions, p. 151;
Hedaya, English Translation by Hamilton, 2nd ed. p. 337.
117. Muslim Institutions, p. 152.
118. Islamic Society and the West, Vol. I, Pt. II, pp. 127-28.
119. Muslim Institutions, p. 148.
120. Hedaya, English Translation by Hamilton, 2nd ed. pp. 334-35.
121. Encyclopaedia of Islam, II, p. 607.
"The qazi was the chief judge in criminal suits and tried them according to Islamic laws. All cases between Muslims as well as all suits between Muslims and non-Muslims came before him."
(Indian Travels of Thevenot p. 290—Notes)
122. Islamic Society and the West, Vol. I, Pt. II, p. 128.
123. Finch, p. 183.
124. Tavernier, p. 79.
125. Manriques, II, p. 160.
126. Encyclopaedia of Islam, II, p. 607.
127. Islamic Society and the West, Vol. I, Pt. II, p. 118.
128. *Ibid.*, p. 132; Dictionary of Islam, p. 255.
129. Encyclopaedia of Islam, II, p. 607.
130. Islamic Society and the West Vol. I, Pt. II, p. 132.
131. *Ibid.*; Encyclopaedia of Islam, II, p. 506.
132. Islamic Society and the West, Vol. I, Pt. II, p. 131.
Muslim Institutions, p. 149.
133. Islamic Society and the West, Vol. I, Pt. II, p. 131.
134. Muslim Institutions, p. 149.

135. Muslim Institutions, pp. 140-50.
136. Islamic Society and the West, Vol. I, Pt. II, pp. 131-32.
137. Manucci, iii, 262.
138. Tavernier, i-269
139. Encyclopaedia of Islam, ii, p. 606;
Dictionary of Islam, p. 255.
140. Muslim Institutions, p. 150.
141. Islamic Society and the West, Vol. I, Pt. II, p. 126.
142. Hurgonje, Mohammadanism, p. 111.
143. Encyclopaedia of Islam, ii, p. 606.
144. Akhbarat-I-Darbar-i-Mu'alla, 30.9. 1704.
145. Tavernier, I, pp. 356-57.
146. Mughal Administration, p. 98.
147. Dictionary of Islam, p. 367.
148. Muslim Institutions, p. 367.
149. Dictionary of Islam, p. 367.
150. Hurgonje, 111.
151. Islamic Society and the West, Vol. 1, Pt. II, p. 137.
152. Bukhari, vol. ix, p. 196; *Sunan Abu Daud*, vol. 111, p. 1213.
153. *ef Rehla* (p. 83) for Sultan Muhammad bin Tughluq's humility towards the chief *qazi* of Dehli, while appearing before him as a defendant on three different occasions. The Sultan lost all the three cases and humbly submitted to the *qazi's* verdict each time and made amends.
154. *Hidaya*, vol. 11, pp. 621-22.
155. A *qazi* had to fear the sovereign only when he did not perform his duty honestly.
156. When Sultan 'Alauddin Khalji, who was very particular about seeing his high judicial officials behave well even in their private lives, discovered that one of his *qazis* had taken to drinking, he put him to death: Badayuni (Eng. Trans.), vol. 1, p. 187.
157. *Rehla*, p. 160. Sharaf Jahan's case shows that the Sultans of Delhi could dismiss *qazis* on the ground of their unpopularity; it also shows that Sultan 'Alauddin was kept well-posted through his effective system of intelligence department about all kinds of events and occurrences in the different parts of his empire.
158. The appointments of Minhajuddin Sirajunder Sultan Nasiruddin Mahmud, which post he continued to enjoy under Sultan Balban also, and of Hamiduddin Multani under Sultan 'Alauddin Khalji as chief *qazi* fall in this category. Such appointments are permitted, but are not desirable.

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159. Cited by Prof. Nizami in his *Salatin-i-Delhi ke Mazhab-i Rujhanat*, p. 161.
 160. *op. cit.*, p. 161. Also compare Prof. Nizami's *Hayat-i-Shaykh 'Abdul Haqq Muhaddis Dehlawi*, p. 17.
 161. When Sultan Jalaluddin Khalji ordered Salyidi Maula to prove his innocence by ordeal of fire, the *qazi* rejected the order by saying that it was contrary to Islamic penal code. He was supported by other scholars of divinity: Barani, p. 211.
 162. The *mifti* was a man of deep learnings and often of great piety. Besides helping the *qazi* with expert opinions on legal points, he played an important role in the religious life of the Muslims.
 163. Barani, p. 497.
 164. *Rehla*, p. 129.
 165. *Rehla*, p. 129.
 166. Qureshi, p. 164.
 167. *op. cit.*, pp. 165-67.
 168. During the Sultanate period, there were no regular jails, and prisoners were incarcerated in some old forts. Amir Khurd the author of the *Siyar-ul-Auliya* describes the horrible conditions prevailing in such jails. He says that once his father, Saiyid Kamal, was imprisoned by Sultan Muhammed bin Tughluq in Bhaksi jail, near Devagiri. It was reported about the place, records Amir Khurd, that few prisoners came out alive from it, as it was full of rats and snakes. Similar conditions prevailed in other jails also; *Siyar-ul-Auliya* (Urdu Trans), p. 190.
 169. A plaint is to be treated as fully corroborated, if two free Muslim men bear witness to it. The onus of proof rests with the plaintiff, for the holy Prophet told a complaint, "You should bring two witnesses, otherwise the defendant will be asked to take an oath (of denial)." *Bukhari*, vol. IX, p. 24; *Muslim*, vol. 1, p. 232.
 170. *Qur'an*, 2:283.
 171. *op. cit.*, 2:283.
 172. *op. cit.*, 2:283.
- Women were, however, debarred from giving evidence in all cases inducing capital punishment or retaliation: *Hidaya*, vol. 11, pp. 633, 667.
173. *Hidaya*, vol. 11, p. 668.
 174. *Hidaya*, vol. 11, pp. 682-84.
 175. In the Turko-Afghan period, Sultan Alauddin Khalji was the first monarch to subject the accused to torture to obtain confession from them. This practice continued till Firoz Shah Tughlaq, on his accession, put a stop to it.

176. Mirat-Ahamadi, I, p. 275.
177. Benier, II, p. 253.
178. Mirat-i-Ahmadi, I, pp. 278-80, 282, 283.
179. Muhtakhib-u-Lubab, II, Teat, p. 252.
180. Ahbarat-i-Darbar-Mu'alla, 4th Oct., 1693.
181. *Ibid.*, 6th September. 1681.
182. *Ibid.*, 12th January, 1693.
183. Akhbaratt-i-Darbar-i-Mualla, 17th Sept., 1695.
184. *Ibid.*, 23rd March, 1702.
185. Indian Travels of Thevenot, p. 27. See also Ovington : A Voyage to Surat, p. 138. He confirms the viewpoint of thevenot.
186. *Ibid.*, p. 124.

According to Achyut Menon there were several forms of ordeal by water. The 'accused had to swim across the ferry at Uzhavam in Cranganur, or that at Pilipuram in Vaipin island which used to swarm with crocodiles, and if the escaped unhurt by these creatures he was declared innocent.'

Coachin State Manual pp. 339-40, 377.

in Indian Travels of Thevenot, p. 326.

Col. H. Temple Drury writes on the ordeal as follows:

A small pagoda, or heathen temple, stands on the bank of the river, in which two alligators were specially supported their daily food having been thrown into the water in order to keep them there. To undergo their ordeal the accused was compelled to swim across this river and back, which if he refused to do, he was dragged through, holding on with his hands to a boat. If the alligator pulled him under the water, it was considered a sign of guilt, if otherwise, he was released as innocent.'

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in Indian Travels of Thevenot, p. 326.

187. Memoirs on the History, Folk-lore and Distribution of the Races of NWFP by Sir Henry Eliot, pp. 279-80.

188. Tavernier-i-269.
 189. The Embassy, p. 478.
 190. Early Travels in India, Nicholas Withington (1612-16), p. 226.
 191. Muslim Institutions, p. 155.
 192. Encyclopaedia of Islam, II, pp. 187; 1038.
- Ibid.* I. 980.

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Ibid I, 710.

193. *Ibid.* II, p. 187.
194. Dictionary of Islam, p. 153.
195. Encyclopaedia of Islam, II, p. 187.
196. *Ibid.* Dictionary of Islam, pp. 476-77.
197. *Ibid.* Muslim Institutions, p. 156.
Encyclopaedia of Islam, II, p. 187.
198. Muslim Institutions, p. 156.
199. Dictionary of Islam, pp. 476-77.
Encyclopaedia of Islam, II p. 187.
200. *Ibid.*
201. Muslim Institutions, p. 156.
Dictionary of Islam, p. 477.
202. Muslim Institutions, p. 156.
203. Dictionary of Islam p. 477.
Encyclopaedia of Islam, II, p. 187.
204. Muslim Institutions, p. 156.
205. *Ibid.*, pp. 156-57.
206. Encyclopaedia of Islam, II, p. 187.
207. Encyclopaedia of Islam, II, p. 1038.
208. *Ibid.*
209. Encyclopaedia of Islam, II, p. 1038.
210. Dictionary of Islam, p. 477.
211. Dictionary of Islam, p. 477.
212. *Ibid.*
213. Dictionary of Islam, p. 477.
214. *Ibid.*
215. Encyclopaedia of Islam, II, p. 1041.
216. Dictionary of Islam, p. 128.
217. Encyclopaedia of Islam, I, p. 980.
218. Dictionary of Islam, p. 153.
219. *Ibid.* Encyclopaedia of Islam, I, p. 900.
220. Encyclopaedia of Islam, I, p. 980.
221. Dictionary of Islam, p. 153. According to the Encyclopaedia of Islam,
it was one-half. Encyclopaedia of Islam, I, p. 980
222. Encyclopaedia of Islam, I, p. 980.

223. *Ibid.*
224. *Ibid.*, p. 981.
225. Dictionary of Islam, p. 128.
226. Encyclopaedia of Islam, IV, p. 710.
227. *Ibid.* Dictionary of Islam, p. 632.
228. *Ibid.*
229. Dictionary of Islam, p. 632.
230. Encyclopaedia of Islam, IV, p. 710.
231. *Ibid.*
232. *Ibid.*
233. Akbar Nama, Bev., III, p. 559; Mirat-i-Ahmadi, I, p. 163.
234. Manucci, III, p. 264.
235. Monsterrate, p. 209.
236. Tuzk-i-Jahangiri, II, p. 242; Bev., II, p. 28.
237. *Ibid.*, I, pp. 150-51.
238. Indian Travels of Thevenot, p. 27.
239. Early Travels in India, pp. 305-6; 326; Akbar Nama, II, pp. 173-76; Manucci, I, 131.
240. Manucci, I, pp. 149; 197; *Ibid.*, II, p. 382, *Ibid.*, IV, p. 422.
241. A Voyage to East India, reprint of 1777, p. 354.
242. *Ibid.*, p. 362; Op. Cit. Manucci, VI, p. 422.
243. Manucci, II, p. 487.
244. *Ibid.*, IV, p. 255.
245. Ma'asir-i-Alamgiri, Text, pp. 93-94.
246. Muntakhin-ul-Lubab, Text II, pp. 388-89.
247. Manucci, IV, p. 256.
248. Baharistan-i-Ghayabi, I, pp. 89-91.
249. Tuzk-i-Jahangiri, Rogers and Beveridge, I, p. 432, Text, p. 256.
250. *Ibid.*, p. 10.
251. Indian Travels of Thevenot, p. 136.
252. Akhbarat-i-Darbar-i-Mualla, 4th Nov., 1693.
253. Muntakhin-ul-Lubab, II, p. 118.
254. *Ibid.*, p. 300.
255. Akbar Nama, III, p. 148; Tr., pp. 209-10.

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256. Manucci, I, p. 233.
257. Early Travels in India, p. 145.
258. Indian Travels of Thevenot, p. 98.
259. Manucci, I, pp. 69; 183; 338; 339; 356; 380;
Manucci, III, pp. 194; 426;
Early Travels in India, p. 293.
260. Akhbarat-i-Darbar-i-Mu' alla, 27th Oct., 1692.
261. Akbarnama, Text, II, p. 345;
Bev. I, pp. 404-5;
Frishata, II, p. 350;
Badauni, Text, II, p. 120; Lowe, II, p. 124.
262. Tuzk, Text, I, p. 6; Tr., I, p. 10.
263. Tuzk, Tr. I, p. 180.
264. *Ibid.*, I, p. 345.
265. *Ibid.*, II, pp. 59-60.
266. Lahori, I, p. 245.
267. *Ibid.*, p. 246.
268. *Ibid.*, II, p. 355.
269. Akhbarat-i-Darbar-i-Mu' alla; 8th Nov., 1695.
270. Akhbarat (Provincial), 46th year.
271. Tavernier, I, pp. 290-91.
272. Manucci, I, p. 90.
273. *Ibid.*, Now. 1693.
274. Manucci, II, p. 198.
275. Manrique, I, p. 424.
276. Akhbarat-i-Darbar-i-Mu' alla, 11th August, 1681; 21 at August 1681.
277. *Ibid.*, 25th October, 1693.
278. *Ibid.*, 22th June, 1694.
279. *Ibid.*, 30th July, 1694.
280. *Ibid.*, 5th November, 1694.
281. *Ibid.*, 20th December, 1703.
282. Memoirs on the History, Folk-lore and Distribution of the Races of NWFP by Sir Henry Elliot, Vol. I, pp. 315-16.
283. Tuzk, I, pp. 84-85; De Laet, 173-76.
284. Tuzk, I, p. 59; Tr. I, pp. 122-23; Iqbal Nama-i-Jahangiri, pp. 28-29; De Laet, p. 177; Elliot & Dowson, VI, pp. 315-16.

285. Tuzk, II pp. 84; Tr., I, 173; Eliot & Dowson, VI, p. 32; Muntakhibul-Lubab, I, Text, p. 261.
286. Manucci, III, pp. 148-49.
287. Indian Travels of Thevenot, p. 79.
288. Hedayat al-Qawa'id, pp. 34-36;
Ain II, pp. 40-41;
Manucci, ii, pp. 450-51; Cf. Mughal Administration, pp. 55-56.
289. Mirat-i-Ahmadi, I, pp. 168-70.
290. Badauni, Lowe, II, p. 404; Text, II, p. 390.
291. Manucci, II, 420-21.
292. Fryer, I, p. 246; Thevenot, ii, pp. 19-20.
Ovington, pp. 137-38, Manucci, ii, pp. 420-21.
Tavernier, I, p. 447.
293. Manucci; A Pepys of Moghul India, p. 147.

War Against the Sovereign

The only crime against the State known to the Muslim Law is waging war against the sovereign. The jurists divide the persons, who openly resist the authority of the sovereign, into four classes.

(a) Those who, without any valid reason, create alarm and commit depredations on the highway. To this class belong the robbers and highway-men.

(b) Those who act in the same manner but under an avowed pretext; the opposition of this kind is called insurrection: here the protest, it may be armed even, is directed against certain acts of government officials, but no revolution is intended.

(c) Those who oppose the sovereign in force and arms on account of alleged tyranny and heterodoxy.

(d) Muslims of the same sect as the sovereign, who openly oppose him in force and arms on whatever account. The last two classes are properly called rebels, and the same law applies to each of them. It is, however, to be noted that to constitute rebellion, it is indispensable that the sovereign authority should be exercised by a lawful ruler.

Whenever the sovereign is informed that preparations are

in progress for insurrection or rebellion by the purchase of arms and means of war, he ought immediately to imprison all persons accused of being concerned in such preparations and detain them in confinement until they repent of their evil intentions; but should these measures prove ineffective and the rebels be drawing together, the ruler must still be slow in commencing hostilities and endeavour to recall the rebels to their allegiance by pointing out the impropriety of their conduct; and if the case require it, by correcting or removing the cause of their unrest. He should not, however, neglect adopting such measures as are necessary for quelling the insurrection: and as soon as he finds pacific measures to be of no avail, he ought to proceed to the reduction of the rebels by force of arms.

All subjects of the ruler are bound to assist him, in suppressing a rebellion and if, in the progress of the war, a faithful subject kill a rebel or destroy his property, he is not liable to fine, compensation or retaliation. Nor, according to the general view, is a rebel, who kills a faithful subject or destroys his property, liable to any responsibility, though he is held to be culpable in the sight of God on account of those acts having been committed in an unlawful cause. The sovereign should warn the rebels of the consequences of their resistance, and he should excuse himself before beginning battle. Night assaults and attacks without warning are to be avoided in order to diminish blood-shed. But in actual fight, rebels are to be treated in the same manner as enemies. The aim of a fight with rebels is to prevent them from disturbing peace and order, not to kill and exterminate them. They may be pursued and killed only when they have a stronghold, wherein to take refuge and prepare for further fight.

It is not lawful to sell arms or warlike stores in the camp of the rebels, but there is nothing to prevent the sale of these items in a town to any person, whether he be known to be a loyal subject or not. It is not, however, unlawful to sell to rebels the materials of arms, such as wood or iron. The rule is contrary to the law regarding enemies who are unbelievers; for to them the sale of arms, warlike stores, horses and iron is

strictly forbidden. But in either case the sale of provisions and articles of clothing is allowed.

If rebels collect the revenue of any district or territory which afterwards submit to the ruler, or from which they are afterwards expelled, the sovereign must not exact revenue for a second time for the period for which it has already been paid to the rebels.¹

In the case of the rebels' defeat, the monarch is not to make slaves of the prisoners or their families, nor to divide their property amongst his troops; but he must sequester such property and not restore it to them, until they repent and return to their allegiance.²

These are the theoretical aspects of dealing with rebels. In actual practice, this criminal codes regarding insurrection and rebellion were severe and punishments deterrent in the Sultanate of Delhi. Sultan Ghiyasuddin Balban was simply ruthless in his punishments of the rebels; he never stopped to consider whether his actions were or were not sanctioned by the *shari'at*.³

Sultan 'Alauddin Khalji went a step further; he punished not only the rebels and their followers after an insurrection or rebellion had been successfully suppressed, but took barbaric revenge on their women and children also.⁴

Sultan Muhammad bin Tughluq was faced with about a dozen rebellions during his reign. He treated his defeated foes in the same manner as Balban and 'Alauddin had done in their times. Vanquished rebels were often flayed alive and their skins, stuffed with chaff, sent for public exhibition to different parts of the empire.⁵

Even when not subjected to capital punishment, the rebels were usually carried around the capital on mules, elephants, or two humped camels. They were dressed now in a penitent's garb in a felt burnoose and a red hair coat; now in a jester's costumes of silk and brocades, with a fox's tail worn by women.⁶

Defiance of the central government was a normal feature of provincial politics in the middle ages. Against this menace,

Sultan Balban was the first to take effective steps. He planted colonies of warlike Muslims in the midst of rebellious tribes, built towns for Muslims with fortresses and mosques in the old Hindu strongholds of Bhojpur, Kampila and Patiali.⁷

Alauddin Khalji followed in the footsteps of Balban in adopting certain useful measures to prevent rebellion in his empire. The mutiny of imperial troops near Jalor in 1299, and the rebellions of Ikit Khan and Mangu Khan, and the revolt of Haji Maula at Delhi in 1300 and 1301, coming one after another in quick successions, had terrified the Sultan. On his return from Ranthambhor in 1301, therefore, he made up his mind to destroy the very bases of such insurrections. He decided that the best way to clip the wings of the refractory elements was to impoverish them. The resumption of crown lands, the enhancement of revenue, and other fiscal measures, combined with the ban imposed on the nobility to visit each other, or to hold convivial parties, or to enter into matrimonial alliances among themselves without the previous permission of the Sultan, went a long way to weaken the nobility from raising its head against the crown.⁸

Cases of Actual or Abortive Rebellions

Under Sultan Qutbuddin Aibak

At the close of the year 1195, when Qutbuddin was at Ajmer, (he was not yet Sultan), news came that the Mehrs (Bhattis) were in open revolt. He immediately marched against them and one morning fell on them. In the engagement he was seriously wounded and his army had to retreat to Ajmer. Emboldened by the success, the rebels pursued Qutbuddin up to Ajmer and there besieged him for several months. When Sultan Shihabuddin Muhammad Ghuri heard of it, he sent a strong force under the command of several experienced *amirs*. But before the reinforcement arrived, the Bhattis withdrew. Qutbuddin again marched against the rebels who, under their leaders, Faj Karan and Dharavarsh, had taken their position at the foot of Mount Abu, where the Delhi army did not dare attack them. After a few days's waiting, the rebels abandoned the pass and advanced to encounter Qutbuddin in the open field.

On 3 February 1196, a severe battle, lasting several hours, ended in the complete overthrow of the rebels. About 50,000 captives were put to the sword and more than 20,000 slaves, 20 elephants and a considerable number of cattle and arms fell into the hands of Albak's army.¹⁰

In early 1205, Sultan Shihabuddin Ghuri suffered a defeat at the hands of the Turkmans near Akhund. It was rumoured in India that he had been killed. Taking advantage of his reported death, the Khokhars and some other tribes to the north of the Salt Range rose in revolt. They defeated the deputy governor of Multan and plundered Lahore and, by closing the roads between that city and Ghazni, prevented the remittance of revenue from the Punjab. Shihabuddin set out from Ghazni in October 1205 to deal with the rebels. He fell suddenly on the Khokhars in a position of their own choosing between the Jhelum and the Chenab and inflicted upon them a crushing defeat in a battle lasting from daybreak until the afternoon. Those who escaped being killed were taken prisoners and their number was so large that five Khokhars sold in the camp for a *dinar*.¹¹

Under Sultan Iltutmish

The first revolt to take place against Sultan Iltutmish was in the capital itself under the *sar-i-jandar* (head of the royal bodyguard), when some of the Turki and *Mu'izzii amirs* left the capital with a strong force and broke out into rebellion in the vicinity of Delhi. The Sultan gathered together a large army, headed by valiant leaders, like 'Izzuddin, Bakhtyar, Nasiruddin Mardan Shah, Hizbaruddin Ahmad Sur and Iftikharuddin Muhammad 'Umar, and marched to face the rebels. The rival forces encountered each other in the plain of Jud.¹² The Sultan won and put most of the rebel leaders to the sword.¹³

Soon after Iltutmish had dealt with Aram Shah's supporters in the plain of Jud, news came that Udai Singh, the Chauhan ruler of Jalor, had rebelled. The Sultan at once marched against him. Unable to face the imperial army, Udai Singh shut himself within the walls of the fortress and sought forgiveness. He was pardoned and his fortress given back to him. He

offered one hundred camels and twenty horses to the Sultan by way of tribute. They Sultan then returned to Delhi.¹⁴

Iltutmish had appointed Malik Ikhtiyaruddin Balka, son of Malik Husamuddin 'Iwaz, to the government of Lakhnauti. When in March-April 1229, the Sultan's eldest son and heir-apparent, Nasiruddin Mahmud, suddenly died in Lakhnauti and the Sultan was overcome by the grief, Malik Ikhtiyaruddin rose in rebellion. Iltutmish himself led an expedition against the rebel, defeated and captured him, and entrusted the province of Lakhnauti to the care of Malik Alauddin Jami.¹⁵

Under Sultan Raziya

The most important event to take place at the very outset of Sultan Raziya's reign was the revolt of the heretics under their leader. Nuruddin Turk, who collected together his disciples from different parts of Hindustan and, with their help, conspired to murder her. On 5 March 1237, they entered the Jami' Masjid and killed about one thousand Muslims, who had assembled to offer the Friday prayer. Before long, however, they were overpowered by the imperial warriors and put to the sword. Their aim of capturing the throne of Delhi and establishing the supremacy of their heretic faith thus came to a naught.¹⁶

Under Sultan Ghiyasuddin Balban

Ascending the throne in 1266, the following year Sultan Balban had to lead troops against the insurgents of Katehr, who had laid waste the territory and caused much suffering to the people. The province was assigned to powerful officers, who were directed to slay the rebels, crush all risings and suppress all lawlessness. The Sultan himself twice rode to Kampila and Patiali, the headquarters of the insurgents; there he remained for about six months during which he put several thousands of them to death, while hundreds of captives were taken to Delhi. There were no more troubles in the Doab until the time of Sultan Jalaluddin Khalji.¹⁷

The most dangerous of all the rebellions that occurred in the reign of Sultan Balban was Malik Tughril's revolt in Bengal in 1279. Balban had long before appointed him governor

of Lakhnauti and Bengal. Taking advantage of the facts that the Sultan was old and his sons were busy fighting the Mongols on the western frontier of the Sultanate, Tughril proclaimed himself king of Lakhnauti with the title of Sultan Mughisuddin, issued coins and inserted his name in the Friday *khutba*.

Three successive expeditions having failed, the eighty-year-old Sultan decided to lead the fourth expedition against Tughril personally. Taking with him his second son, Bughra Khan¹⁸, and having appointed his friend, Fakhruddin, the *kotwal* of Delhi, to act as regent during his absence, Balban, set out for Bengal in early 1280.

The Sultan's courage and ruthless will unnerved the rebel, who collected his treasure and followers and, leaving Lakhnauti, made in all haste for Hajinagar. Balban pushed on with utmost speed and occupied Lakhnauti. There he left Malik Husmuddin 'Iwaz with instructions to keep him informed about affairs in Delhi and himself set out in Tughril's pursuit. After a long chase, Tughril was captured and slain by an advance party of Balban's army sometime in the middle or second half of 1281. Balban then returned to Lakhnauti, where exemplary punishments were meted out to the adherents of *Tughril*; everyone suspected of having the slightest connection with the rebel was hanged on gibbets erected along the two sides of the Lakhnauti *bazar*.¹⁹

Under Sultan Jalaluddin Firoz Khalji

The first rebellion to take place under Jalaluddin Khalji was that of the governor of Kara, Malik Chhajju, Balban's nephew and head of the extinct royal family. In August 1290, he raised the banner of revolt at his headquarters and was joined by Hatim Khan, who held the neighbouring of Awadh. The rebels advanced towards Delhi, where they were sure of gaining the support of a numerous faction not yet reconciled to the rule of the Khalji dynasty. The Sultan marched to meet them, and his advanced guard, under his second son, Arkali Khan, encountered them near Badayun and defeated and dispersed them. Two days after the battle, Chhajju and several other *amirs*, who had espoused his cause, were sent in fetters to the Sultan at Badayun. Jalaluddin Khalji, however, treated

them kindly; their fetters were removed, they were given bath and their shabby dresses were exchanged for new ones. The Sultan paid no heed, when his nephew, Ahmad Chap, protested against his benevolent gesture towards Chajju and his followers.²⁰

In 1291, Saiyidi Maula, a *sufi* and former disciple of Fariduddin Ajodhani, had founded a monastic centre in the Delhi, where he entertained people on a grand scale every day, although he accepted neither an allowance from the State nor offerings from anyone. He himself ate sparsely and led a life of austerity. He did not marry, nor did he maintain any slave (male or female) to attend upon him; he did his personal work himself. Amongst his admirers counted the Khan-i-Khanan, the eldest son of the Sultan, and some of the old nobles of Sultan Balban's court, who had enrolled themselves as his disciples. Soon the number of his followers reached ten thousand.

Not long after, the Sultan was told that there was a plot to raise Saiyidi Maula to the throne of Delhi. He had the saint arrested and brought to the court. He wanted the Maula to prove his innocence by ordeal of fire, but the religious divines objected to this method to prove one's innocence; the quality of fire, they declared, was to burn, it made no distinction between the guilty and the non-guilty.

The Sultan had no proof against Saiyidi Maula, but he was bent upon punishing him. Failing to get a confession direct from the accused, he appealed to Shaikh Abu Bakr Tusi Haidari²¹ and his followers, who were present there, to avenge him "on this man" (i.e. Saiyidi Maula). No sooner was the hint given than Hanri Haidari, a disciple of Abu Bakr Tusi, sprang upon the saint and stabbed him several times with a packing-needle. Arkali Khan, who bore a personal grudge against Saiyidi Maula, then made his elephant trample him to death.²²

Under Sultan Alauddin Khalji

When after the sack of Gujarat (1299), the imperial army was returning to Delhi, it halted near Jalor. Here one-fifth of

the booty of each soldier was demanded as the share of the State and force was used to realize it. This unwise step led a large section of the army, mostly new-Muslims, into open revolt. The leaders of the rebels, according to 'Islami'²³, were Qamizi Muhammad Shah, Kabbru, Yalhaq and Burraq' and according to Yehya,²⁴ Yalhaq Kisra, Begi, Tamghan, Muhammad Shah, Tamar Bagha, Shadi Bagha and Qutlough Bagha.

One morning they murdered Malik A 'izzuddin, younger brother of Nusrat Khan.²⁵ Next they attacked the camp of Ulugh Khan, but he had gone out for a wash and thus escaped death. The soldiers then killed a nephew (sister's son) of the Sultan, mistaking him for their prey. Ulugh Khan escaped to the tent on Nusrat Khan, and the two generals, with their unfailing presence of mind, ordered drums to be beaten. Soon loyal soldiers put on their arms and assembled in front of the tent of Nusrat Khan. The new-Muslims were overtaken by consternation and fled. Muhammad Shah and Kabbru sought shelter with Ranna Hamira of Ranthambhor, while Yalhaq and Burraq went to Rai Karan, the vanquished ruler of Gujarat then staying in Mandurbar as a guest of Rama Deva of Devagiri.

The chief rebels had escaped, but a cruel fate awaited their wives and children at Delhi. The moment Sultan Alaaddin Khalji heard of the outbreak, he ordered arrest of all the members of the rebels' families. When Nusrat Khan returned to the capital, he seized the wives of the murderers of Malik A'izzuddin and handed them over as whores to the scavengers of Delhi, while their young children were cut to pieces in the very presence of their mothers.²⁶

While Sultan 'Aalauddin was busy with the sieze of Ranthambhor (1301), intelligence reached him that, taking advantage of his absence from the capital, his sister's sons, 'Umar Khan and Mangu Khan, governors of Badayun and Awadh respectively, had risen in rebellion. He at once deputed a few experienced nobles and the trouble was soon got over. The two youths were captured and sent to Ranthambhor, where they were blinded and put to death and their families and followers exterminated.²⁷

Following close upon the abortive revolt of 'Umar and Mangu, news came that a serious revolt had broken out at the capital. The chief conspirator was Haji Maula, a prominent slave of Malik Fakhruddin, the late *kotwal* of Delhi. Encouraged by rumours of discontent in the imperial army before Ranthambhor, Haji Maula assembled a number of dismissed and disgruntled members of the city police and others, and, by exhibiting to them a forged decree purporting to bear the royal seal, induced them to join him in attacking the new *kotwal*, Tirmizi.²⁸ On reaching his house they found that he, like most Muslims of the capital, was asleep, for the Muslims were keeping the annual fast, which fell that year in May-June. He was called forth on the pretext of urgent business from the imperial camp and was at once seized and beheaded. The crowd, which had been attracted by the disturbance, was satisfied by the exhibition of the forged decree and dispersed. Haji Maula, having caused the gates of the city to be shut, then proceeded to surprise 'Alauddin Ayaz, the *kotwal* of Siri, but the latter had already heard of Tirmizi's fate and refused to fall into the rebel's trap. Haji Maula then marched to the Red Palace, released all the prisoners held there, broke into the treasury and distributed bags of money among his followers. He seized an unfortunate Saiyid, named Shaista,²⁹ who happened to be descended through his mother from Sultan Iltutmish, raised him to the throne and compelled the leading citizens of Delhi to pay him homage.

On the third or fourth day after the rebellion had broken out, Malik Hamiduddin, the *amir-i-koh*, with the help of his sons, relations, loyal citizens of the capital and a reinforcement of troops from some of the neighbouring districts of Dehli, confronted, defeated and slew Haji Maula with his own hand. They loyal troops regained the Red Palace, got hold of, and beheaded Shaista and sent his head to the Sultan.³⁰

Under Sultan Qutbuddin Mubarak Khalji

Malik Kafur, during the short time of his usurpation of the throne of Delhi, had got Alp Khan, governor of Gujarat, killed and appointed Malik Kamaluddin Gurg in his place. This led to a rebellion by Alp Khan's followers, who killed

Malik Kamaluddin and broke away from Delhi. Qutbuddin Mubarak, on his accession, entrusted the job of regaining Gujarat to 'Ainul Mulk Multani. 'Ainul Mulk marched out of the capital at the head of a powerful army. On reaching Nahrwala, he engaged the rebels in a series of battles, inflicted upon them a crushing defeat and made them run for safety to distant Hindu kingdoms. Gujarat once more became a province of the Sultanate of Delhi.³¹

In the second year of his reign (April, 1317), Sultan Mubarak had to lead an expedition to Devagiri which, upon the death of Malik Kafur, had thrown off its subjection and been taken possession of by Harpal Deva, the son-in-law of Rama Deva. On his arrival at Devagiri, the Sultan found that Harpal Deva and other Hindu chiefs, who had joined him in his rebellion, finding themselves unable to withstand the imperial army, had dispersed, leaving Devagiri to its fate. He recovered Devagiri without fighting or spilling of blood. He then sent some officers in pursuit of Harpal, the leader of the rebels, Harpal was captured and the Sultan ordered him to be flayed alive and his skin to be hung over the gate of Devagiri.³²

Before leaving Devagiri, Sultan Mubarak had assigned the government of the province to Malik Yak Lakhi, a Hindu-born slave officer of his father. Yak Lakhi had been *barid-i-mamalik* for several years. Soon after Mubarak returned to Delhi, Yak Lakhi declared his independence, assumed the title of Sultan Shamsuddin and struck coins in his name. On hearing the news, the Sultan sent Khusrau Khan against him. Five of the highest officers, namely, Talbagha, Shadi Salila, Qutlugh Bagha, the *amir-i-dad*; Tajul Mulk and Khawaja Haji, the *ariz-i-mamalik*, were ordered to accompany him. Khusrau Khan had no difficulty at Devagiri. Yak Lakhi was seized and taken to Delhi where, at the orders of the Sultan, his ears and nose were cut off, and all his chief followers were done to death.³³

Under Sultan Ghiyasuddin Tughluq

During the period of confusion created by Khusrau Khan's capture of imperial power in 1320, the Raja of Devagiri had relapsed into disaffection. Having wrested the crown from

the usuper, Sultan Ghiyasuddin Tughluq sent an army under his son, Malik Jauna (the futrue Sultan Muhammad Tughluq) to regain Devagiri and Warangal. While the imperial forces lay before the walls of Warangal, one Shaikhzadla of Damascus, Ubaid the poet; Malik Makh Afghan and some other mischievous men circulated a romour that the Sultan was dead and a revolution had taken place at Dehli.³⁴ This created a confusion in the imperial camp in the Deccan, and the prince was compelled to raise the siege and retrace his steps towards Devagiri. A few days later it was discovered that the rumour was baseless. After a thorough inquiry the authors of the rumour were detected, seized and sent prisoners to the court. The Sultan ordered them to be buried alive with the caustic remark that "As they had buried me alive in jest, I bury them in earnest."³⁵

Barani further adds that the families of the culprits were also thrown under the feet of elephants and crushed to death.³⁶

After punishing the mischief-mongers, the Sultan sent reinforcements to the price, who regained Warangal and sent its ruler, Raja Ludder Deva, a prisoner to Delhi.³⁷

Under Sultan Muhammad bin Tughluq

On his accession, Sultan Muhammad had sent his cousin (father's sister's son), Bahauddin Gurshasp,³⁸ to govern Sagar. Gurshasp revolted in 1327. The Sultan sent his primminister, Ahmad Ayaz, with a large force against him. After several severe and prolonged encounters, Gurshasp was captured, put in fetters and carried to Dehli. There he was flayed alive; his meat was cooked and served to the elephants. His skin, stuffed with chaff and straw, was paraded throughout the empire.³⁹

Soon after the unsuccessful rebellion of Gurshasp, Bahram Aiba, surnamed Kishlu Khan, declared his independence at Multan. The Sultan himself marched to deal with him. In a battle in the desert plain of Abuhar, at a distance of two days' journey from Multan, Bahram was defeated. He fled the field of battle but was pursued, captured and beheaded, and his head was hung up at the city gate to serve as

a warning to others.⁴⁰

When after suppressing the rebellion of Kishlu Khan, the Sultan was returning from Multan and had reached Dipalpur, a courier from his brother, Bahram Khan, governor of Sonargaon, came and reported that Ghiyasuddin Bahadur, better known as Burha⁴¹, governor of Lakhnauti, had risen in revolt and caused much bloodshed and confusion. The Sultan ordered his brother to march against the rebel. Burha was defeated, captured and flayed alive. His stuffed skin was sent to the court with the message of victory. The Sultan ordered celebrations of this victory for forty days in Dipalpur, and the skins of Burha and Kishlu Khan "were displayed from a height like two kernels in one shell."⁴²

On Bahram Khan's death, the government of Sonargaon fell into the hands of Malik Fakhruddin, who had been the weapon-bearer of the late Khan. Malik Fakhruddin rebelled in 1338-39 and assumed the title of Sultan Fakhruddin. Malik Pindar Khalji, governor of Lakhnauti, along with Malik Husamuddin Abu Raja, the auditor-general; Azam Malik 'Izzuddin Yahya, the *muqta*, of Satgaon; and Firoz Khan, the *amir-i-koh*, marched to Sonargaon to deal with Fakhruddin. The rebel fought them, but was defeated and fled; his elephants and horses fell into the hands of the imperialists.⁴³

Mas'ud Khan was the Sultan's step-brother; his mother was a daughter of Sultan 'Alauddin Khalji. Sultan Mahammad had ordered her to be stoned to death on the charge of adultery, and this had caused a deep resentment in Masud's was arrested and accused of contemplating revolt against the Sultan. He was so frightened at the thought of being tortured that he admitted the allegation straight and was executed in the centre of the market. His body was not allowed to be buried for three days.⁴⁴

In 1338, Nizam Ma'in, who had undertaken to farm the revenue of Kara for several lakhs of *tankas*, but could not pay even one-tenth of the amount promised, declared his independence and assumed the title of Sultan 'Alauddin. 'Ainul Mulk, governor of Awadh and Zafarabad, and his brother, Shahrullah, were sent against the rebel. Nizam Ma'in was

captured, flayed alive, and his stuffed skin was sent to the court.⁴⁵

'Ainul Malk, governor of Awadh, had for many years administered his province with success and earned great popularity. His devoted victualling of Swargdwari during the most critical period of the devastating famine (1335-41) had spread his fame far and wide. Many of the respectable families of Delhi, fearing the Sultan's tyranny, had left the capital and taken residence in Awadh, where they received generous treatment at the hands of 'Ainul Mulk. With these immigrants had also come others, less desirable fugitives from justice, who were extended protection on the eastern principle that it is dishonourable to surrender to justice even a malefactor who has sought an asylum with a protector. 'Ainul Mulk was humiliated by a demand for their surrender, but the chief cause of his estrangement from the Sultan was the latter's design to transfer him to the government of the Deccan to take the place of Qutlugh Khan.⁴⁶ The avowed reason for the transfer was 'Ainul Mulk's efficiency and success as a governor, from which some improvement in the situation in the Deccan might be expected. But it was generally held that the deplorable condition of the Deccan provinces was due not to any fault of Qutlugh Khan; 'Ainul Mulk feared that the Sultan's real motive in transferring him from Awadh was jealousy of his power and influence, and that the object of appointing him to a government in which Qutlugh Khan had failed was to ensure his disgrace and destruction. His brothers, who had loyally assisted him in the government of Awadh, urged him not to submit to the caprice of an ungrateful master. Opportunity favoured him, for the elephants, horses, pack animals and cattle of the royal army had been sent across the Ganges into Awadh for grazing, and the rebellion was precipitated by the seizure of those animals, while 'Ainul Mulk fled the royal camp and joined his own army on the east of the Ganges. He assumed the title of Sultan 'Alauddin, and for the first time in his reign Sultan Muhammad had cause to tremble for his throne and his life. The disaster to his army in the Himalyan terrains had impaired his prestige, and his severity and cruelty had alienated the nobles in his camp, on

whose fidelity he could no longer rely. The rebel army, though composed of poor material, was more numerous than his own, and he desired to avoid an immediate battle. Hastily summoning reinforcements from Delhi and other towns, he marched rapidly towards Qanauj, seeking the protection of its walls. A'inul Mulk on the eastern bank marched from Bangarnau, and it seemed that the Sultan's only hope of safety lay in outstripping him. When it became known that the rebels had crossed the river, the Sultan felt much alarmed, for he did not believe that they would have ventured on this step without encouragement from traitors in his own camp. The rebels attacked his outposts by night, and the battle soon became general. Notwithstanding the overwhelming numerical superiority of the enemy, the Persians, the Turks and the Khurasanis in the royal army fought valiantly, and the dawn saw the rebels in full flight. Many, including A'inul Mulk's two brothers, were slain in the battle or drowned in the Ganges. A'inul Mulk was taken prisoner.

Few rebels, who fell into his hands, escaped a cruel death, but the Sultan had the grace to remember the long and faithful services of 'A'inul Mulk and simply imprisoned him. Not long after, 'A'inul Mulk was released, treated kindly, bestowed upon a robe of honour and his sons and other relations were restored to him.⁴⁷

In 1341, Malik Shahu Lodi, an Afghan noble, who had a considerable following of his own tribe, slew Malik Bihzad, governor of Multan, seized the city and assumed sovereignty. When news of his disloyalty reached Delhi, the Sultan assembled his army and set out to crush him. He had hardly covered two or three stages, when he heard that his mother had died.

The Sultan did not permit his mourning for his mother to interrupt the expedition and he continued his march. When he reached Dipalpur, he learnt that Shahu, hearing of his personally leading the campaign against him, had given up courage and fled to Afghanistan. The Sultan thereupon returned to the capital and issued orders for the wholesale arrest of Afghans in his empire.⁴⁸

Under Sultan Firoz Tughluq

In 1376-77, Shamsuddin Damghani was appointed governor of Gujarat on the promise that he would, in addition to the usual *mahsul* (annual payment to Delhi), give forty lakhs of *tankas* more along with a hundred elephants, two hundred horses and four hundred slaves from among the sons of *muqaddamis* and Abyssinians. He was unable to keep his promise and rebelled. But the centurian *amirs* of Gujarat cut off his head and sent it to the court. This is the only rebellion of a governor in Firoz Shah's reign, and no army was needed to suppress it. Gujarat was then assigned to Malik Mufarrah Sultani with the title of Fakhru'l Mulk.⁴⁹

Under Sultan Khizr Khan

In the very first year of his accession (1414), Khizr Khan had to send an expedition against Rai Har Singh of Katehr, who had refused to recognize his authority. After a struggle the rebel was compelled to submit. But in 1418, he again revolted. The Sultan sent Tajul Mulk to deal with him. Har Singh behaved in a desperate manner. He laid waste Katehr and then sulkily retired to the ravines of Aonla; but he was pursued and considerable damage was done to his army and equipment. He, however, sought shelter in the hills of Kumaon. An army consisting of 20,000 men was sent in pursuit. Har Singh emerged from the hills on the fifth day. The imperial troops returned with rich booty but without any substantial achievement against the Rai. Tajul Mulk then proceeded to Badayun and from there to Etawah. Rai Sabir of Etawah shut himself up in the fort, but agreed to pay tribute.⁵⁰

In 1419, Khizr Khan had to march in person to chastise the inhabitants of Koil, Rahab and Sambhal, who had been causing a lot of trouble to him. Mahabat Khan, governor of Badayun, who was present in the Sultan's camp, having had a foreboding that his own fief might next be attacked, quietly slipped from the imperial camp and entrenched himself in Badayun. Mahabat Khan was a noble of Nasiruddin Mahmud Shah, but after the new dynasty had come to power, he had turned loyal to Khizr Khan. But now, for no apparent reason he got scared and fled to his headquarters.

The rebellion of such an old and trusted noble, who had a number of friends and supporters in the royal camp, was not easy to deal with. It was reported that *Maliks* and *amirs*, like Qawam Khan, Ikhtiyar Khan and many officers of late Mahmud Shah, were sympathetic to the rebel. To isolate them from Mahabat Khan, Khizr Khan, who had been besieging Badayun for nearly six months, raised the siege even when victory was almost at hand, and retraced his steps to Delhi. During his return journey, he invited all the suspected nobles, including Qawam Khan and Ikhtiyar Khan, to a function arranged on the banks of the Ganges and there got them done to death.⁵¹

Under Sultan Saiyid Mul 'zzuddin Mubarak

In 1424, the Mewastis having risen in rebellion, the Sultan marched against them and carried fire and sword through their country. The Mewatis devastated their own land and took refuge in Jahrah, which was an invulnerable retreat. The imperial forces fell short of provisions and returned to the capital without achieving anything.

A year later, in 1425, the Sultan again proceeded to Mewat, because the area far from being settled. The Mewati chiefs, Jallu⁵² and Qaddu,⁵³ grandsons of Bahadur Nahir, having destroyed their places, sought refuge in the hills of Indur. After a siege of several days, during which the Sultan's forces pressed hard, the Mewatis made off to the hills of Alwar. The Sultan raised to the ground the forts of Indur and proceeded to Alwar in pursuit of the rebels. Jallu and Qaddu shut themselves up in the Alwar fort. The royal forces, however, pressed hard upon them and Compelled them to surrender. But Qaddu again showed signs of rebellion by trying to escape to his hill retreats; he was consequently thrown into prisons and Mewat was ravaged. The scarcity of supplies, however, obliged the Sultan to retire to Delhi.

In early 1428, sultan Mubarak was involved in an armed conflict with Sultan Ibrahim of Jaunpur. In this conflict, Malik Qaddu secretly exchanged presents and envoys with the Sharqi ruler. As soon as Mubarak Shah was free from the Sharqi menace, he decided to take firm action against the Mewatis.

This terrified other chiefs of the area. Jallu and other chiefs, such as Ahmad Khan, Malik Fakhruddin, Malik 'Ali and their Kinsmen, shut themselves up in the Indur fort. When Sarwarul Mulk pressed hard, the besieged offered to pay tribute and were left in peace.⁵⁴

Under Sultan Bahlul Lodi

1. In 1485, Tatar Khan Yusuf Khail, the *muqta* of Sarhind, Hisar Firoza, Samana, Lahore and Dipalpur, feeling confident of his vast military strength, (he had 15,000 mounted soldiers in his army), and financial resources, became hostile to the Sultan. He not only occupied some *parganas* of crown land, but also dismissed the officers appointed by the Sultan. The Sultan sent Nizam Khan, along with 'Umar Khan Sarwani, Miyan Sa'id Farmuli, Nasir Khan Nuhani, Darya Khan Nuhani and other distinguished nobles, to chastise Tatar Khan. In a battle fought near Ambala, Tatar Khan was defeated and killed.⁵⁵

Under Sultan Ibrahim Lodi

When Ibrahim Lodi, on the death of his father, ascended the throne of Delhi, his younger brother, Jalal Khan, fled to Jaunpur and there declared his independence. Sultan Ibrahim was forced to send troops against him and, after a protracted campaign, Prince Jalal was captured. He was condemned to imprisonment in Hansi, but was murdered on the way thither.⁵⁶

Islam Khan, younger brother of Masnad-i-Ali A'zam Humayum Sarwani, rose in rebellion in the province of Kara. To quell his rebellion, Sultan Ibrahim deputed Ahmad Khan Lodi, the eldest son of Khan-i-Jahan Lodi. The imperial general, after a protracted campaign, was able to defeat and kill the rebel on the battle field.⁵⁷

The nobles of the eastern *sarkars* and *vilayats* rose in rebellion against the Sultan, when Nasir Khan Nuhani, the *muqt'a* of Ghazipur, disobeyed the royal *farman* by not attending the court. The Sultan sent troops against Nasir Khan who was defeated; he however, managed to escape to his father, Darya Khan Nuhani, governor of Bihar, and the Sultan was unable

to do any harm because of his pre-occupation on the western frontier against an impending invasion by Babar, which ultimately cost him his throne.⁵⁸

References

1. *Hidaya*, vol. 1, p. 21.
2. The Sultans of Delhi with a few exceptions, seldom stood by these injunctions, as cases of rebellion discussed in the following pages of this chapter will show.
3. Barani, p. 47.
4. *Ibid*, p. 253.
5. *Ibid*, p. 479; Isami, p. 428.
6. Some prominent citizens of Delhi living at Lakhnauti had sided with Tughril Beg in his rebellion. After the rebellion was suppressed, Sultan Ghiyasuddin Balban carried those people in chains back to the capital where he intended to hang them on gibbets. On the intercession of his *Qazi-i-Lashkar*, who was a kind-hearted man, however, the Sultan relented, but, as a token punishment, had them paraded through the streets of Delhi on the backs of male buffaloes and then set them free: Barani, p. 108.
7. Barani, pp. 57-58.
8. Fuller & Khallaque, pp. 72-75.
9. The Muslim considered inauspicious to commence fighting on the same spot where Sultan Shihbuddin Muhammad Ghuri had been wounded on a previous occasion.
10. Aziz Ahmad, pp. 138-40.
11. CHI, vol. 111, pp. 47-48.
12. A few miles away from Delhi.
13. Raverty, vol. 1, p. 606; Aziz Ahmad, pp. 162-63; Habibullah, p. 92.
14. Elliot & Dowson, vol. 11, p. 238; Aziz Ahmad, pp. 196-97.
15. Isami, pp. 119-21; Habib & Nizami, p. 220.
16. Raverty, vol. 1, pp. 646-47, Yahya, p. 24; Aziz Ahmad, pp. 196-97.
17. Barani, pp. 57-59, Elliot & Dowson, vol. 111, pp. 105-106; Aziz Ahmad, p. 274.
18. This was his title; his real name was Mahud. 13 Barani, p. 92.
19. Barani, pp. 252-53; Isami, pp. 244-45; Elliot & Dowson, vol. 111, pp. 163-65; Fuller & Khallaque, pp. 24-26; Lal, pp. 86-88, Habib & Nizami, pp. 335-36.

20. Barani, pp. 181-84; Elliot & Dowson, vol. 111, pp. 137-40; CHL, vol. 111, pp. 92-93; Lal, pp. 22-26; Habib & Nizami, pp. 313-17.
21. The Haidaris were a short-tempered mystic sect, who used to wear iron necklaces, rings and bracelets. They carried sharp-edged instruments and razors on their persons and freely used them.
22. Barani, pp. 208-12; Elliot & Dowson, vol. 111, pp. 144-46; CHL, vol. III, pp. 94-95; Lal, pp. 27-32; Habib & Nizami, pp. 320-21. according to 'Isami (p. 210), however, Sultan Jalauddin Firoz Khalji did not believe that Saiyidi Maula wanted to overthrow him, when he was informed of the plot. He asked Arkali Khan to let go the man of God, but the latter did not listen to him and had the saint done to death.
23. *Futuh-i-Salatin*, p. 244.
24. *Tarikh-us-Mubarak Shahi*, p. 76.
25. Nusrat Khan was one of the four most important and trusted imperial generals at Sultan 'Alauddin Khalji's court, the other three being Ulugh Khan (the Sultan's own younger brother), Zafar Khan and Alp Khan. Ulugh Khan's original name was Almas Beg, Zafar Khan's Malik Yusuf Hizbaruddin and Alp Khan's Malik Sanjar. Malik Sanjar was the brother of the Sultan's second wife, Mahru: Barani, p. 242.
26. Barani, pp. 252-53 Islami, pp. 244-45; Elliot & Dowson, Vol. 111, pp. 163-65; Fuller & Khallaque, pp. 24-26; Lal, pp. 86-88, Habib & Nixami, pp. 335-336.
27. Barani, pp. 277-278; Elliot & downson, Vol. 111, p. 175; Fuller & Khal-laque, pp. 61-62;1 Lal, pp. 107-08; Habib Nizami, p. 345.
28. Tirmizi was a great tyrant and everyone in Delhi hated him: Barani, p. 278.
29. Barani, p. 280, does not mention his name, he simply calls him an Alwi.
30. Barani, pp. 278-81; Islami, pp. 268-69, Elliot & Dowson, vol. 111, pp. 175-78; Fuller & Khallaque, pp. 62-68; CHL, vol. 111, pp. 104-05; Habib & Nixami, pp. 354-47.
31. Barani, p. 388.
32. Barani, pp. 389-90; Elliot & Dowson, vol. 111, pp. 214-15; Habib & Nizami, pp. 434-35; Lal, pp. 328-30.
33. Barani, pp. 397-98; Elliot & Dowson, vol. 111, pp. 218-19, Habib & Nizami, pp. 438-39.
34. Ibn Battuta alleges that Prince Jauna himself had instigated 'Ubaid to spread the rumour about his father's death, hoping that the imperial troops with him in the Deccan would accept him as their new sovereign and, with their support, he would be able to gain the throne. But unfortunately for him, no one believed 'Ubaid, and his ambition remained unfulfilled : *Rehla*, p. 50.

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35. Barani, pp. 446-49; 'Isami, pp. 383-91; Elliot & Dowson, vol. 111, pp. 232-33; Briggs, vol. 1, pp. 232-33; *Tughluq Dynasty*, pp. 64-66.
36. Barani, p. 449.
37. *Ibid.*
38. Ibn Battuta calls him Ghushtasp: *Rehla*, p. 95.
39. *Rehla*, pp. 95-96; 'Isami, pp. 411-17; *Qaraunah Turks*, pp. 64-67; Habib & Nizami, pp. 500-03.
40. Barani, pp. 478-79; *Rehla*, p. 97; 'Isami, pp. 418-27; Elliot & Dowson, vol. 111, p. 242; *Qaraunah Turks*, pp. 75-78; Habib & Nizami, pp. 504-05.
41. Isami (p. 409) calls him Pura. He also asserts that Bahram was governor of Lakhnauti and Pura administered Sonargaon.
42. Isami, p. 428; Habib & Nizami, pp. 505-06.
43. Elliot & Dowson, vol. 111, pp. 242-43; Habib & Nizami, p. 530.
44. *Rehla*, pp. 85-86; Habib & Nizami, pp. 532-33. According to Islamic Law, a corpse must be buried immediately, except in the case of a confirmed highway robber. The Sultan's action was contrary to Islamic Law.
45. Barani, pp. 487-88; Elliot & Dowson, vol. 111, p. 247; Habib & Nizami, p. 533.
46. Qutlugh Khan had acted as a tutor to Sultan Muhammad when the latter was a prince. He was also an administrator of eminence. He was held in high esteem by the Sultan both for his deep learning and excellent administrative qualities; Barani, p. 506.
47. Barani, pp. 485-91; 'Isami, pp. 452-55; *Rehla*, pp. 104-09; Elliot & Dowson, vol. 111, pp. 246-49; Habib & Nizami, pp. 534-36; CHI, vol. 111, pp. 156-58.
48. Barani, pp. 482-83; *Rehla*, p. 113; Elliot & Dowson, vol. 111, pp. 244-45; Habib & Nizami, p. 537; CHI, vol. 111, p. 160.
49. Afif, pp. 499-501; Briggs, vol. 1, p. 264; Habib & Nizami, p. 617.
50. Habib & Nizami, pp. 638-39; *Twilight of the Sultanate*, p. 79; CHI, vol. 111, p. 208.
51. Habib & Nizami, p. 638; CHI, vol. 111, pp. 206-08.
52. His real name was Jalal Khan.
53. His real name was Qadr Khan.
54. Habib & Nizami, pp. 646-49.
55. *Tarikh-i-Dawudi*, pp. 30-33; Habib & Nizami, p. 684.
56. Habib & Nizami, pp. 702-05; CHI, vol. 111, pp. 246-48.
57. *Tarikh-i-Khan-i-Jahani*, vol. 1, pp. 248-51; Habib & Nizami, p. 706.
58. Habib & Nizami, pp. 706-07.

Official Corruption and Abuse Authority by Imperial Servants

The Muslim rulers of Delhi were anxious to see that imperial servants behaved honestly in their dealings with others. But, unfortunately, not unoften State officials indulged in all sorts of dishonest practices—foregery, cheating, embezzlement and bribery—to amas wealth. The Muslim rulers were aware of this, and they took serious notice of these sordid activities. Dishonest persons not only made the common people victims of their unscrupulous dealings, but often the State itself suffered at their hands. In the latter case, when found guilty, they were given exemplary punishments. The Sultans confiscated their all-gotten wealth, tortured and even put them to death in certain cases.

The Sultans Rule

Though there are few specific cases of forgery, cheating, embezzlement and bribery on record, the contemporary chroniclers, throughout the period under discussion (1206-1526),

lament that persons entrusted with power by the State were not honest. They did not allow any opportunity to make money to slip off; they did not bother about the means by which the objective was to be gained. It is in this general tendency of acting dishonestly by persons in places of influence and power that one has to look for the reason for very harsh and deterrent punishments being meted out to the offenders.

Sultan 'Alauddin Khalji on ascending the throne found that the revenue department was the haven of corrupt people, especially at the lower levels. He determined to do away with the evil. He created the department, known as the *diwan-i- mustakhraj*, which was entrusted with the duties of looking into the arrears (of revenue) lying in the names of collectors, and recovering them. This department freely punished the dishonest *amils* and *karkuns*. Equally drastic measures were taken to stop corruption among the *patwaris* and other lower officials of the revenue department. Realizing that the poor salaries of the officials tempted them to accept and even extort bribes, the Sultan increased their salaries and lowered the prices of essential commodities, so that they could live in comfort and respectability. The severe punishments and effective steps to make the life of the poorly-paid servants easy bore fruit. Barani affirms that it was no longer possible for anyone to take even a *tanka* from either a Hindu or a Muslim by way of bribe or extortion.¹

To prevent corruption and embezzlement, Sultan Ghiyasuddin Tughluq paid his officers well and promoted to high rank only those who gave proof of loyalty and devotion to duty.²

Case of Forgery

Under Sultan Ghiyasuddin Balban

Towards the close of his reign some persons, alleged to have minted forged coins, were brought before Sultan Balban. Amongst them was a boy, the only son of an old widow. He was innocent and had wrongly been arrested. His mother made pathetic representations to the Sultan on his behalf, but they were not heard; it was not Balban's habit to show leni-

ency in crimes against the State. All persons implicated in the forgery case, including the young man, were executed. This put the old woman's heart on the rack. Every night she would appear before the imperial palace to bemoan the death of her son and demand Divine punishment for the Sultan. Her pathetic cries made the Sultan lose his sleep. All attempts to dissuage her from raising her heart-rending cries failed. She was not afraid of "iron", and could not be tempted by "gold". Her bemoaning went on until news of the martyrdom of the Sultan's favourite son, Prince Muhammad, at the hands of the Mongols, reached the capital, when she suddenly disappeared and was never seen again.³

Case of Cheating

Under Sultan Firoz Tughluq

When Sultan Firoz Tughluq decided to issue the *shashgani*, a silver coin worth six *fitals*, he ordered Kajar Shah, director of the imperial mint, to supervise the work. After the coin was released for circulating, two persons represented to the Sultan that there was a deficiency of one grain of silver in the *shashgani*. The Sultan asked his *wazir* Khan-i-Jahan Maqbul, to look into the matter. Maqbul sent for Kajar Shah secretly and told him of the complaint. He, however, assured Kajar that there was not intention of charging him with complicity in the alleged cheating, but he should make inquiry among his subordinates. If the allegation of deterioration be true, he (Khan-i-Jahan) would think of some plan to prove it wrong. Kajar Shah went to his office, inquired into the complaint and found that the coin was really one grain short in its silver content. He returned to Khan-i-Jahan and told him the truth. Khan-i-Jahan suggested that some reliable goldsmith should be asked to devise some means to contrive to show that the *Shashgani* was perfect and did not suffer from any deficiency of silver. A certain goldsmith agreed to play a trick and convince the Sultan that the allegation was false. When, on the advice of Kajar Shah, the said goldsmith was summoned to the court to test the purity of the coin, he managed to smuggle the required quantity of silver in charcoal. When a few *shashganis* were melted in the crucible, which contained the

necessary amount of silver to make up for the deficiency, and then weighted, it was found that they contained the specified quantity of silver in them. The two informers were exiled for false reporting, and Kajar Shah was publicly paraded, mounted on a decorated elephant, through the streets of Delhi to show that he was an honest man.⁴

Cases of Embezzlement Under Sultan Muhammad bin Tughluq

Daulatabad was a vast and rich province. There, grapes and pomegranates grew and bore fruit twice a year. The provincial capital itself was one of the greatest and most prosperous cities in the Deccan. The Delhi Sultanate earned a fat revenue from this province. Once a certain Hindu speculator bought from Sultan Muhammad the right of collection of revenue of the province for seventeen crores. When, however, the time for payment to Delhi came, the speculator failed to fulfil his commitment. The Sultan ordered his arrest on the charge of embezzlement, confiscated his entire property and had him flayed alive.⁵

Under Sultan Firoz Tughluq

Qazi Sadrul Mulk, *muqta'* of Mahoba, was punished to death for having embezzled fifty lakhs from the treasury.⁶

In 1381, Sultan Firoz Tughluq had promoted Malik Shamsuddin Abu Raja to the high office of *mustaufi-i-mamalik* and bestowed upon him the Ziyaul Mulk. Shamsuddin, however, did not prove worthy of the honour and the office. No sooner had he assumed charge of his office than he started extorting bribes from each and everyone who had any financial dealing with him. Even the most powerful *iqta'dars* submitted to his demands *parganas*, being asked to pay as bribe a sum which was beyond his capacity, in a state of desperation, picked up courage and brought to the notice of the Sultan the corrupt *mustaufi's* nefarious activities. The Sultan was simply shocked at the revelations made by 'Abdullah. He ordered an inquiry into the conduct of the *mustaufi-i-mamalik*; his agony crossed all limits when the investigations showed that the charges levelled against Shamsudding were only too

true. Not only that, it was also discovered that Shamsudd'n had embezzled a huge amount of State fund during the past three years.

The Sultan dismissed Shamsuddin from imperial service, confiscated his entire property and banished him to a far off place where even water was not easily available, not to speak of other necessities of life.⁷

Under Sultan Sikandar Lodi

Ever since the imprisonment of Barbak Shah (younger brother of the Sultan), the administration and collection of the revenue of Jaunpur had been entrusted to Mubarak Khan Lodi. After sometime the Sultan demanded from Mubarek Khan an account of his stewardship. The Khan, who had been guilty of wholesale peculation, was much alarmed and sought the intercession of several influential courtiers with a view to avoid an inquiry, but his anxiety betrayed his crime and he was ordered to pay into the treasury the large sums which he had embezzled.⁸

Case of Bribery

Under Sultan Sikandar Lodi

In 1507, Mujahid Khan, the garrison commandant of Dholpur fort, who was reported to have taken bribe from the Raja of Tahingra at the time of its siege, was arrested by the orders of the Sultan, and the fort of Dholpur was placed under the charge of Malik Tajuddin Kanbu.⁹

The Mughal Rule

Bribery was very common during the Mughal rule in India. As the means of communications were undeveloped, it was not easy for the Central Government to remain in close contact with the activities of its officials. Even news-writers, supposed to keep the Central Government informed of the activities of the officials, could fall an easy prey to this vice.¹⁰

A governor would sometime bribe the Emperor to secure his continuance in office.¹¹

As even today, the people who were anxious to get their

work done in a short time and speedy manner, could afford to pay for it to the persons concerned.

Then there was the system of presents. It was common practice at that time to present gifts to the higher officials or big people whenever visits were paid to them. This practice was prevalent throughout the country and even the Emperor formed no exception. Rather it was regarded as an insult if a person went to the Emperor without a proper present. Even the Princes of the royal blood approached their father with some suitable gift for him. Akbar had issued an order that every person from the lowest to the highest should bring a present when he came to visit him.¹²

The argument was provided in the *Hedayat al-Qawaid*. In order to gain favours from the dead saints, people never visited their tombs without handsome offerings of sweets and flowers. How much more are presents necessary for gaining the favour of living men?¹³

When any one went to Jahangir, he had to offer a present.

The offer of acceptance of the present did not expose its giver or recipient to any odium in society. There are copious references to the system of gifts by the foreign travellers. Even official records have made no secret of the fact.

Through the mediation of Nur Jahan, Jala'ir Khan was appointed the governor of Orissa on a promise of a *peshkash* of three lacs of rupees from his income. Mirza Ahmad Beg, a relation of the Begum, and a nephew of the Bengal governor, Ibrahim Khan, represented to her and got the appointment had been cancelled, demanded the return of the money paid by him. For this he had to undergo many troubles. It was with some difficulty that he could save his *mansab* and *jagir*.¹⁴

Mirza Nathan presented to the Bengal governor, Ibrahim Khan Fateh-Jang, a number of elephants, 100 small and big boats and other gifts. The Khan became highly pleased and recommended to the 'Sublime Court' and particularly to Nur Jahan Begum his promotion in rank and title. Moreover, it became 'incumbent' upon Mirza Nathan to send suitable gifts as *pashkash* to the Court to Nur Jahan, I'timad-ud-daula and

other nobles. Mirza Nathan collected all the rare gifts from his house and obtained others on credit and sent these in charge of Hatim Khan and Gopal Das to the Court. These included one suitable elephant for the Emperor and one female elephant for Nur Jahan. The total value of these gifts was Rs. 40,000.¹⁵

Ibrahim Khan, the governor of Bengal (1617-23), offered the office of the Sardar of the Sylhat territory, after the death of Sheikh Suleiman, *thanedar*, to Mirza Nathan, on payment of an imperial *peshkash* of Rs. 2,000.¹⁶

Mirza Nathan returned from Hajo without permission of the governor, Ibrahim Khan. Mukhlis Khan Diwan calmed the furious governor and brought about a reconciliation between the two. Next day when the Diwan came to the house of Mira Nathan to console him, the Mirza presented him with nine costly horses, a hundred *thans* of rare cloth of Bengal, one mound of high class agar (aloe-wood), and Rs. 5,000 in cash. Mukhlis Khan accepted only the *agar* and one horse.¹⁷

Tahawwar Sha'ar Ajab Sing, *thanedar* of Othal in the *sardar* of Ujjain, accepted in 1706 one rupee by way of thanks when he released the two wives of one Mohan. They had quarrelled with one another and had been kept in custody by him.¹⁸

In the same year *Tahawwar Dastagah* Udai Singh, *thanedar* of *pargana* Bhaurasa in the *sarkar* of Sarangpur, went to the village of Sahiya in connection with a serious complaint against the *kotwal* there. The *muqaddams* of the village came and each presented one rupee by way of present. Moreover, he enjoyed a feast there along with his soldiers.¹⁹

Similarly, *Rif* at Panah Banarsi Das, *mutasaddi* of the *jagir* of Nawab Nawazish Khan, who visited the town of Othal, was presented one rupee each by the *qanungos* and *chaudharis* in 1706.²⁰

There was no normal code to guide the conduct of the government officials in those days and the general conditions of the times did not warrant such a code. The officers as a rule did not feel any sense of responsibility towards the people in this connection. Mostly they lived fast and were always

badly in need of money. Moreover, particularly because of the system of presents, in had not been possible for a strong public opinion in the country to develop against the prevalent vice of bribery.

Haji Ibrahim Sirhindi was accused in 1584 of accepting illegal gratifications. He was dismissed and confined in the fortress of Ranthambor.²¹

Daulat Khan, entitled Nazir-ud-daula, the head eunuch in Akbar's reign, had, according to Jahangir, no equal in the 'receipt of bribes.' He left ten *krors* of *ashroafis* and jewels worth three *trors*. All the money was appropriated by the Emperor.²²

We learn from the letters written by the English factors to the East India Company that quite often they had to bribe the officials before they could get their goods released.

Sir Thomas Roe records with satisfaction that in November, 1616, he was successful in recovering all the money that had been taken by the Mughal officials from the servants of the Company before his time.²³

During the governorship in Bengal of Ibrahim Khan, one *Shaikh* Ibrahim Karori misappropriated seven lac of rupees and rebelled. He offered bribe to another imperial officer who accepted it. Moreover, he bribed twenty-five imperial horsemen.²⁴

There is a reference to the corruption by governors and other officials in a letter of 18th February, 1620, written by Thomas Kerridge to the Company. He complains that from "the king to the lowest" there was great corruption.²⁵

Prior to this, an English caravan was detained at Burhanpur by the Mughal authorities on the complaint of a Portuguese that some Englishmen owed him some silver etc. The Surat factors wrote to James at Burhanpur to spend, if necessary, any reasonable amount in bribes. The caravan was released later on by the orders of Prince Khurram.²⁶

A letter of 28th March, 1620, has given details about the amounts of bribe to be paid to the governor of Gujarat, the

customsofficer of Surat and the broker there. In lieu of these bribes the English would have their coral released and gain the liberty to buy and sell at their discretion.²⁷

The customs-officer, however, broke the pledge, and, in spite of the bribes, fined both the broker and the *shroff* for buying and selling with the English.²⁸

During a consultation held in Surat by President Kerridge and others on 20th February, 1621, they decided the amounts of bribe to be paid to different persons serving in the Customs Department there. It was resolved to offer cloth worth 600 *manudis* to the Customer, of half the value to the Chief Writer, distribute 200 *Mahmudis* among other officials. Earlier, they had settled with the Customer to offer him a scarf worth 25 *mahmudis*, but he, instead, took one worth 47 *mahmudis*. They agreed to this on the understanding that the expected caravan from Mandu would be permitted to come in without further bribes to him or other officers.²⁹

On 10th April, 1621, Thomas Kerridge wrote to the Company that there was such a tough opposition in Surat at the arrival of their coral there, that he had to pay the Customs-Officer a large sum of money in bribe.³⁰

Sometime they bribed the Customs-Officers of Surat to help them recover their debt from some Indian merchant as a letter of September 1621 shows.³¹ They complain in another letter that on their refusal to give the Customs-Officer a certain quantity of cloth, he 'stopt the currant of your business....'³²

A letter of 23rd August, 1623, records that Nicholas Bangham, an English factor, had to pay a bribe of Rs. 30 to the Diwan and his subordinates before he could be permitted to depart from Broach.³³

In a letter of 26th October, 1623, Hopkins wrote from Surat to President Rastell to send them grape-wine as Safi Khan had demanded it twice.³⁴

Mirza Ghias Beg, the father of Nur Jahan, was notorious for taking bribes.³⁵

Aqa Taqi, the chief officer of Qulij Khan, the *sardar* of Hanjo in Bengal, had misappropriated all the revenues of the

dismissed *sardar*. Qulij Khan imprisoned his clerks and took his family as hostages to his next officer, Mirza Nathan.³⁶

When Shahryar shut himself up in the fort of Lahore after the defeat of his forces by the imperialists under Dawar Baksh and Asaf Khan late in 1627, his officers accepted bribes and admitted the imperialists into the fort.³⁷

Khan Jahan Lodi, the governor of the Decan, in the beginning of Shahjahan's reign, had accepted a bribe of three lacs of rupees from the Nizam-u-mulk and surrendered to him the territory of Balaghat.³⁸

Manrique found that in the reign of Shahjahan, the Catholics had managed to control trade in India by bribing the 'governor', i.e. the customs-officer of Surat and his chief officials.³⁹

When Shahjahan rewarded a musician with Rs. 1,000 the latter burst into tears and disclosed that he would have to part with money to the gate-keepers of the palace by way of bribery. This clever representation of the case made the Emperor laugh. He ordered the twenty-five gate-keepers then on duty to receive one thousand stripes each by way of punishment.⁴⁰

Wazir Khan, a noble at Shahjahan's court, took huge bribes, sometime amounting to Rs. 30,000 a day. According to Mandelslo, the merchants at Ahmadabad, had to pay no customs on the export or import of goods. They paid, however, fifteen pence per wagon to the *kotwal* of the place. They even discovered at the Surat customs-house that every way-farer had to pay about 18 pence to the waiter as a tip.⁴¹

In March 1628 the English and the Dutch got into trouble with the Mughal authorities for buying and transporting saltpetre without the permission of the government. Two of the English factors, Clement and Banghan, were kept prisoners in the castle for a night and day. They were released when they gave bribe and present to an officer, Raza Bahadur.⁴²

One their way from Surat to Agra in November 1630, Peter Mundy, accompanied by the caravan, came to a place called 'Barnolee'. He was asked there to pay Rs. 20 as custom.

He evaded the payment by giving one *mahmudi* to the peons as bribe.⁴³ Two years later, Peter Mundy bribed the *faujdar* of Banaras and got released his cart which had been confiscated for *bagar*.⁴⁴

In August 1636, John Drake was at the royal camp on the *Narbada*. He experienced much trouble in procuring a *farman* from the Emperor as every one demanded bribe from him. Khusrow Beg would accept nothings less than Rs. 500. Drake gave him a gold chain and Rs. 100.⁴⁵

Methwold and the Council warned the English factors at Ahmadabad in march 1638 not to give further bribes to Saif Khan.⁴⁶

During Aurangzeb's viceroyalty in the Deccan (1636-44), his representative Banda Rizai embezzled money and amassed a good fortune. He was recalled and imprisoned.⁴⁷

Complaints were made to Shahjahan against Mohammad Sa'id *kotwal* who did not decide cases in a just manner and took bribe. He was ordered to be bitten by a cobra in the presence of the king.⁴⁸

As salt-petre was a prohibited commodity, it had become a practice to pay some quantity of it to the officer concerned. In March 1654, the English at Surat were sure that the salt-petre at Ahmadabad would not be released without a heavy bribe to the customs-officer.⁴⁹ In December 1654 a quantity of salt-petre belonging to the English was stopped at Rajmahal. The English factors there opined that to secure its release and for future negotiations it would be necessary to bribe the governor and other officers. They were of the opinion that in such matters they should follow the example of the Dutch and pay annual presents.⁵⁰

'Inayat Khan, the commandant of Surat, used to draw from the treasury the pay of 50 soldiers but had for long appropriated the money without maintaining a proper force.

The rich people, to avoid Shivaji's attack, bribed 'Inayat and found shelter in the fort.⁵¹

Towards the close of 1669, the Dutch in Bengal captured

salt-petre belonging to the English. The latter complained to the Mughal authorities who instituted a sort inquiry. It was considered that the presents sent by the Dutch to Shaista Khan would stifle all further inquiry.⁵²

Even the Princes of royal blood and ministers of state were not above the vice of corruption.

We are informed by Manucci that a few days before his departure for the Deccan for the conquest of the territories of Golconda, Prince Dara had deprived him by bribery of the eighty European artillerymen in his (Mir Jumla's) service.⁵³

After Dara's defeat and Aurangzeb's entry into Agra, Aurangzeb communicated with the artillerymen under the Englishman, Ruben Smith, who were in the fort under Shahjahan. After accepting bribe from Aurangzeb, they escaped by descending the walls with the help of ropes.⁵⁴

Manucci has narrated the story of an Armenian, Khwaja Safar, who took from the Surat merchants cloth worth Rs. 15,000, loaded it from there, then declared himself bankrupt. They took than to the court where the judge delivered the judgment in his favour as he had already won him over by giving him a bribe of Rs. 5,000.⁵⁵

Jafar Khan Wazir (1664-70) was notorious for taking bribes.⁵⁶

Sometimes the people of a certain locality refused to put up with the excesses of an oppressive executive official or a corrupt judge. They wrote to the court demanding his replacement. During his stay at Burhanpur in November, 1681, the citizens made a complaint to the Emperor against *qazi* Mohanunad Rashid. They accused him of having accepted illegal gratifications and delivering unjust and wrong judgments, and of causing unnecessary in-convenience to the public at large. Aurangzeb decreed that Ihtimam Khan should arrest the said *qazi* and send him to *qazi* Sheikh-ul-Islam who was to institute legal proceedings against him.⁵⁷

In a letter written to Aurangzeb on 26th October, 1692, the news-writers of Berar were accused of accepting bribes from the *gumashtas* to the *jagirdars* and of their failure to report against their excessive oppressions of the *ryots* there.

Orders were sent from the Emperor's court warning the news-writers against this wrong practice. They were asked to send factual reports. The guilty ones were ordered to be transferred.

During the last days of Aurangzeb's reign, it had become a common practice for officers in distant provinces to bribe the powerful persons at the court and do things in their own manner.⁵⁹

A Bengali Muslim in the party of Manrique was accused of killing two peacocks. He was got released by the Portuguese traveller by paying valuable presents to the wife of the *qazi*.⁶⁰

The paucity of the recorded cases might make one believe that bribery was very infrequent in Mughal India. It is necessary, however, to remember that these cases show the general prevalence of bribery among the public servants at that time. The convention of offering presents had its evil effects. Every one expected similar presents from those below in rank. The result was that bribery in itself was not considered a crime, though a complaint could be made against an officer who was suspected of having been bribed into giving an unjust decision in a particular case. This is further proved by the fact that the *Fatawa-i 'Alamgiri* does not seem to say a word about bribery as a crime. All the foreign travellers including Palsaert have complained about the greedy nature of the Mughal officials. His invective even goes against the governors who accepted bribes from thieves and remained inactive, for 'avarice dominates manly honour.'⁶¹

Embezzlement

The contemporary records do not contain adequate information regarding speculation as a crime. We learn that whenever a case of embezzlement was brought to the notice of the Emperor, he ordered inquiries to be made. The lack of sufficient material does not help us to form an opinion about the punishment of this form of offence.

Aurangzeb had ordered that an official, on a charge of embezzlement, was to be dismissed from his post or imprisoned, but he was not to be fined.⁶²

Khwaja Shah Mansur, 'an adept at the mysteries of accounts', was an accountant in the Perfumery Department. Later on, he joined the service of Mun'im Khan. After the Khan's death, Raja Todar Mal. 'on account of question about accounts', imprisoned him in 1576 and put chains on his body. Not only was he pardoned by the Emperor, but promoted to the exalted post of Wazir.⁶³

In 1580, 'Ala-ud-din Yazdi, the Diwan of Gujarat, was suspected of embezzlement. The governor of the province Mirza Aziz Kokaltash, handed the Diwan over to his servant, Talib, to be kept as a prisoner. Talib, however, exceeded the limits of his powers, and wrongfully killed 'Ala-ud-din Yazdi. For this offence, the Mirza ordered the execution of Talib.⁶⁴

Roshan Beg, a collector of exchequer lands in Bengal, embezzled money and fled to Kabul some time before the Bengal revolt in 1580. Later on, he received capital punishment but on a different charge of rebellion.⁶⁵

The son of *qazi* Jalal Multani, the *qazi* of the army, was accused of having embezzled treasury money. *Qazi* Jalal himself had forged in a *farman* a draft of one lac of *tankas* and had drawn it from the treasury for his own use. *Khwaja* Fatehullah Shirazi was his accomplice in this act. Both *qazi* Jalal Multani and the Khwaja were exiled to Mecca in 1582. The *qazi* died in Mecca.⁶⁶ There is no mention of the punishment that was meted out to the son of the *qazi*.

I'timad-ud-daula was accused by his Hindu servant, Utam Chand, of having embezzled Rs. 5,000. The Emperor ordered him to be handed over to Dayanat Khan who was to keep him in custody.⁶⁷

Shahjahan came to know that the wife of Khalil Ullah Khan wore shoes worth three millions of rupees. He took this as a sign of the vast wealth of the noble, a greater part of which he must have got by 'theft', meanings thereby perhaps embezzlement. Khalil Ullah Khan was required to render his accounts in detail so that it might be found out how he had come by that money.⁶⁸

The officials, we learn, availed themselves of every op-

portunity to embezzle the government collections. Munucci complains that it was always their habit to keep three-fourth for themselves and pay one-fourth of the State.⁷⁰

It was reported by the people of Karnal on 16th December, 1666, that the *qazi* of the place had appropriated public money. Aurangzeb ordered that he be entrusted to 'Aqil Khan.⁷¹

Aurangzeb learnt that the treasure and district officer of Lauli collected about Rs. 16,000 annually as toll on merchants and travellers and sent only about Rs. 2,000 to the royal treasury. The Emperor ordered Prince A'zam to make inquiries.⁷²

It came to the knowledge of Aurangzeb that Amir Habib Ullah of Jaunpur, the *amin* of the toll tax on non-Muslims, had admitted to have appropriated from the imperial treasury a sum of Rs. 40,000. The Amir was detained by 'Inayat Ullah Khan who had appointed strict collectors to exact money from him. The Emperor forgave the *amin* as he had spent all the money for charitable purposes.⁷³

Bahadur Khan, the governor of the Deccan, was accused of embezzlement. Orders for his dismissal and for the confiscation of his property were issued. Later on he was forgiven. 'Abdulla Khan, the Bakshi there, was dismissed on the ground of making wrong entires of the collections.⁷⁴

Aurangzeb came to know that Tarbiat Khan, who had got money for distribution among the soldiers of the fortresses. kept it for his own private use. A'zam was ordered to make inquiries and take suitable action.⁷⁵

Muttalib Khan, *darogha* of the mace-bearers, made a submission through Mihr Yar 'Ali to the effect that Banwari had a claim of 1.50 lacs of rupees against Mohammad 'Evaz', the dismissed *mutasaddi* of Surat. Banwari had also brought to his notice that the same official had misappropriated 9 lacs of rupees there. He was prepared to furnish a proof of this from the account books of the local money-lenders (*Sahukars*). In the petition, the *darogha* had requested the Emperor to appoint two mace-bearers as *sazawals*.

The Emperor conceded his request and ordered the appointment of Siddiq Beg Mohammad Said for the purpose.⁷⁶

Abuse of Imperial Authority

From time immemorial, people in position of authority have been taking undue advantage of their privilege and indulging in exploiting the common man for their personal benefits. It is this evil practice that is responsible for tyranny, oppression and maladministration. The imperial servants under the Sultans of Delhi were no exception to this rule; they also, like their predecessors, tried to make full use of an opportunity, when it presented itself, to satisfy their lust for money and things of material value. But the Sultans were equally anxious that their subjects were not oppressed. This is apparent from the fact that they showed no mercy, and punished severely such persons as were found guilty of oppression and tyranny, however high in rank and social status they might stand. Sometimes the punishment was in the shape of fine and imprisonment, but in serious cases of oppression and tyranny it could cost the culprit his very life.⁷⁷

Delhi Saltunat

It is true that people living far off from the capital could not have always found it possible or wise to travel long distances to present personally before the Sultans their tales of woe. But this handicap was, to some extent, mitigated by the fact that the Sultans themselves tried to gather informations regarding the behaviour of their officials serving in far off places through their spy system. The spies kept them informed of the day-to-day happenings in their respective areas of vigilance. In this way many cases of tyranny and oppression reached the Sultans' ears, and the perpetrators of those crimes were dealt with appropriately.

The Sultans did not depend only on the efficient reporting of their newswriters; they themselves often toured the different parts of their empire and personally inquired about the welfare of their subjects. During those tours, the people of the territory, through which the imperial procession passed, could come forward and place before their sovereign cases of oppression or maladministration they might have been subjected to. Sultan Ghiyasuddin Balban discovered several cases

of tyranny and oppression practised by his high-ranking servants during his tours of the provinces. We are also told that such a strict watch was kept on the conduct of the fief-holders under Sultan Ghiyasuddin Tughluq that they could not withhold a *dang* of *dirham* out of the salaries of their retainers. Payments were to be made promptly and regularly, and if any *jagirdar* realized more than was his due from the tenants, the transaction was cancelled by the Sultan.⁷⁸

These measures kept the State officials on their toes. The happy result is seen in the fact that we do not come across many cases of tyranny or oppression recorded in the chronicles of the Sultanate period.

Cases of Tyranny and Oppression under Sultan Ghiyasuddin Balban

Once it was reported to the Sultan that Malik Haibat Khan, governor of Awadh, had beaten an innocent person to death. The Sultan inflicted five hundred lashes on him; Malik Haibat managed to escape capital punishment by appealing to, and making the widow of the deceased accept twenty thousand *tankas* as black-money.⁷⁹

Under Sultan Muhammad bin Tughluq

Malik Mujir, governor of Bayana, had committed many acts of cruelty and oppression. He had killed a large number of innocent people of the city of Bayana and mutilated an equally large number of them.⁸⁰ Once the Sultan paid a visit to Bayana. The inhabitants of the city complained to him against the governor's tyranny. The Sultan at once ordered his arrest and a collar was put round his neck. In that condition he had to attend the *diwan* and sit in front of the *wazir*, while the people put in black and white their grievances against him. The Sultan made him reconcile them and he did so by giving them money. After that he was put to death.

Under Sultan Sikandar Lodi

Sultan Sikandar had repeatedly declared in his *farmans* that *imlak* (taxable land) and *waza'i* (agricultural lands distributed among pious and needy people in charity) were ex-

cluded from *iqtas*: if any noble dared disobey and act to the contrary, he would be severely punished. In spite of this Miyan Malih, *wajahdar* or Arwal (in modern Gaya district, Bihar) deprived a Saiyid of his charitable land. The victim appeared before the imperial court and filed a petition against the oppression he had suffered at the hands of Miyan Malih. The Sultan ordered Miyan Bhuya to look into the complaint and see that justice prevailed. After two months' hectic investigations, Miyan Malih was found guilty. He was publicly humiliated in the court of justice; his *jagir* was taken away from him, and he was dismissed from office.⁸²

Case of Maladministration

Under Sultan Sikandar Lodi

While staying at Sambhal during the years 1499-1504, Sultan Sikandar Lodi heard several complaints of corruption and maladministration against Asghar Khan, whom he had entrusted with the government of Delhi. He asked Khawas Khan governor of Machiwarra, to proceed to Delhi and send Asghar Khan in chains to the court. Receiving intelligence of this step, Asghar Khan left Delhi on his own and threw himself at the Sultan's feet; but not being able to offer proper excuse for this conduct, he was thrown into prison and the administration of Delhi was put under the charge of Khawas Khan.⁸³

Mughal Dynasty

There are many references by the contemporary authorities to the tyranny exercised by the contemporary authorities to the tyranny exercised on the people by the governors and *faujdars*, customs and revenue officials. The peasants had to suffer at the hands of the greedy officials and soldiers. The former extorted money out of them and the latter marched through their fields and damaged their crops. The artisans worked under hard conditions and were molested by the customs and other officers. The Mughal Emperors did not usually ignore the offences of the officers, whether ministers or governors, and awarded suitable punishment to the guilty in accordance with the nature of the crime. The punishment varied from fine and imprisonment to dismissal and death.

Complaints against the Governors

Banarsi Das, a *jauhari* of Jaunpur and a contemporary of Akbar and Jahangir, has given an account of the oppressions committed by the Hakim of Jaunpur, Qulich Khan, on the diamond-dealers of the city in 1595 A.D. When they failed to provide him with the required 'big article', he, one morning in that year, ordered the arrest of all the *jauharis* there. Like thieves they were brought in his presence and mercilessly flogged with 'thorny' whips. They were let off in a half-dead condition. Terrified at this treatment, they left the city and fled to different places. Baharsi's own father Kharg Sen *jauhari*, left Jaunpur with his entire family, crossed the Ganges and came to Shahzadpur in the west. From there they wandered to Allahabad, Fatehpur and other places. They did not return home for full four years. Such was the terror of the name of Qulich Khan. Kharg Sen's own and other *jauhari* families returned to Jaunpur in 1599 A.D. only when they learnt that the tyrant had gone to Agra.⁸⁴

Orme remarked about the 'unhappy' system of oppression that prevailed throughout India from the highest to the lowest scale.⁸⁵

Bernier felt pity for the poor lot of the Mughal subjects. They groaned under the tyrannies of the provincial governors possessing boundless authority. The people suffered less under governors of some standing than under those, who, indigent and greedy, first took charge of their provinces. The tyranny was somewhat mitigated by the apprehension that if too much oppressed, the people would abandon the country.⁸⁶

The same traveller again complains of the absence of a higher authority before whom an injured tradesman, peasant or artisan, could pour out his complaints against the tyrannies of 'merciless oppressors.'⁸⁷ The Mughal subjects could hope for no redress against the cruelties of the provincial governors, however grievous their injuries might have been.⁸⁸

The people felt compelled to labour for fear of the cudgel and the whip. Compelled to despair by this cruel treatment,

they thought of flight or revolt but were prevented from this step due to the presence of military force.⁸⁹

For a peasant or an artisan it was not easy to travel a long distance to file an appeal in the imperial court. The obstacles that lay before him were almost insurmountable. How could he defray the expenses of a long journey? Was not there lurking in his mind the constant fear of the highwaymen who waited for every opportunity to waylay and murder a traveller? Then there was the danger of falling into the hands of the governor's men. His difficulties did not abate even if he managed to approach the royal court. He would find his oppressor's friends busy in distorting the truth, and misrepresenting the whole affair to the Emperor. And there was a likelihood of the case being reverted to the local court at the commands of the Emperor.⁹⁰ These difficulties, however, were peculiar not to Mughal India, but were characteristic of the times. Bernier levels the entire blame for all failure in agriculture, industry, and social welfare in India during the Mughal rule to the tyranny of the governors.⁹¹

Our authorities fail to inform us of any case of complaint against the governors during Akbar's time.

On the death in 1614 of Mirza Gazi Tarkhan, the governor of Thatta, Rustam Khan was appointed in his place. He committed such oppression on the people that they complained against his wickedness to Jahangir.⁹²

Islam Khan, governor of Bengal, Confiscated the *jagir* of Tuqmaq Khan, Son of Maqbul, as he was accused of enslaving the people by force and violence. It was restored, however, at the intercession of Ghiyas Khan.⁹³

During Qasim Khan's governorship of Bengal, Mohammad Zaman, *arori* of Kuntaghat was accused of oppressing the *ryots* and seizing their beautiful boys and girls. He died of witchcraft. He was replaced as *Mustajir* by Salim Beg Khaksar. There were complaints against him also by the people. In his place was sent mirza Momín Marivi as *karori* and *faujdar*. He returned as a result of serious illness and then a *zinnardar* (Brahmin) Raja Ram was sent as the *Mustajir*.⁹⁴

There were charges of extortion against Akram Khan who was in charge of the affairs at Jahangirabad or Gilhanay. His rivals collected reports against him and decided to send these to the royal court. Mirza Nathan proved the falsity of some of the charges and thus stopped the report from being sent.⁹⁵

One day when the *Diwan* of Bengal, Mirza Husain Beg, was present in the governor's court, an altercation took place between his men and the *kotwal*. Qasim Khan governor's men were killed and wounded. When some men were sent to bring the cons of the *Diwan*, They offered a vigorous resistance. A large crowd gathered and broke the gates of the building with the aid of elephants. One officer of the governor whose accounts of treasure ship had been hindered by Husain Beg, threw all the account books of the *Diwan* into a well. The two sons of the *Diwan* were caught and with their hands tied behind their backs, they were brought to Qasim Khan bare-headed and bare-footed. The governor grew furious and ordered them to be handed over to those persons whose brother had been killed by them in battle, so that they might be killed in the square of the city market. They were scourged and then taken to the market square. When the executioner took out his naked sword to do his job, two officers, Mubariz Khan and Mirak Bahadur Jala'sir approached the governor with the request to cancel his orders for the execution of the young brothers. Their plea was that fault lay on both the sides and there was looting and killing by the other party as well, and that the death punishment for such a crime was not justified. They recommended that the case should be referred to the Emperor. Then Khan agreed and ordered the two brothers to be carried from the market place and confined in the prison along with their father. He released them after six *pahars* when the two Khans had signed a memorandum that the two brothers and their father were guilty. He ordered the confiscation of all the property of the *Diwan*.

The two Khans did not feel satisfied with this mode of treatment and left for their respective *thanas*.

This incident caused a predicament for the provincial news-writer, Khawaja Yaghma, particularly after the governor had

secured the *tazkira* (memorandum) from the two Khans. He was well aware of the fact that Qasim Khan had secured the frontiers in such a manner that not 'even a bird' could fly from this side to northern India. The astute news-writer thought of a device. He asked his two grooms to be dressed like *jogis* (mendicants) and sent them with the report of the whole incident to Anil Rai Singh Dalan at the Court. The Raja took them to the *sharoka* (salutation window) where Jahangir was witnessing the elephant fight and presented the two in the same dress along with the report to the emperor.

The Emperor issued a peremptory *farman* for Qasim Khan. He ordered that a great noble of the imperial Court would be sent to Bengal for an investigation into the matter. Taking in view the services of the Chishti family, the Emperor refrained from running the career of Qasim Khan. He was however, ordered to pacify by all possible means Hussain Beg and his sons, obtain a letter of satisfaction from them and send it along with the governor was to face diverse punishments. In accordance with the custom, Qasim Khan received Sa'adat Khan with the greatest humility and respect.

After having known the contents of the royal *farman*, the governor returned all the goods and property of Mirza Hussain, gave him and his sons one lac of rupees, assigned them a *jagir* in the *pargana* of Mahadpur Bhagwan, and took a deed of agreement and satisfaction from the Mirza and his sons. After this was done, Sa'adat Khan returned to the imperial court to report the matter to the Emperor.

There had been other reports from the *Diwan* and the *Bakshi* of the province about the improper behaviour of the governor towards the imperial officers. The Emperor sent a special officer Ibrahim Kalal, entitled Ihtimam Khan, who was the superintendent of the Court of Justice. Reaching Dacca, he gave verbal admonition to Qasim Khan, the governor, and the the *Diwan* and the *Bakshi* and news-writer and returned to the capital.

He conveyed to the *Bakshi* the displeasure of the Emperor at his failure to report the matter to the imperial court and asked him to be careful in the future.⁹⁶

In 1615 A.D. Jahangir appointed Agha Nur as the governor of Jaunpur. The very news spread terror among the populace and the people began to flee their houses and went to different directions. Banarsi Das and his poet friend Narottam Das came from Ayodhya to Jaunpur to learn that Agha Nur had perpetrated tyrannies on the people between Banaras and Jaunpur and given thrashing to them. He had arrested tall the jewellers and *jauharis*, *sarrafs* and their agents, flogged some, enchained others. Terrified at the news, Banarasi and Narottam left the city, crossed the river on a *ghanai* (made by bamboos) and fled to the jungles. There they lived for full forty days. They returned only after they had learnt that the tyrant had returned to Agra although having taken with him a few rich *jauharis* after giving them furious beating.⁹⁷

Manucci complains against the tyrannies perpetrated by the provincial governors.⁹⁸

The merchants of Gujarat complained against the exactions of the *Diwan*, Hafiz Mohammad Nasir. An enquiry was ordered. The report was found to be authentic. The offender was awarded life imprisonment and was confined in Patna.⁹⁹

Complaints were received that Fidai Khan, the governor of Bengal, oppressed the people. Shahahan took action against him and removed him from power. On his representation that the reports were untrue and not liable to be proved, he was restored to his post.¹⁰⁰

A'zam Khan, the governor of Gujarat in about 1639, although judicious and a man of understanding, was so rigorous that his government was inclined somewhat towards cruelty. He put to death some dancing girls who had refused to come to his place in obedience to his summons.¹⁰¹

The English factors complained of the 'unheered of tiranie' and oppressions of the 'villaine' of Surat in 1647-48. He oppressed the innocent and the poor. Whole towns of the miserably poor people were depopulated by him on the pretext of their harbouring rogues and thieves.¹⁰²

'Izzak Khan, the governor of Sind, had great weakness

for women and tried all methods, fair or foul, to procure a beautiful girl that came within his knowledge.¹⁰³

Prince Murad Baksh, while governor of Gujarat, during the last years of Shahjahan's reign, oppressed the *Banjaras* to such an extent that they gave up their trade in saltpetre.¹⁰⁴

The news-writer of Lahore wrote to Aurangzeb about the oppression which the governor, Khan Jahan Bahadur, committed at the time of his return.¹⁰⁵

Aurangzeb brought to the notice of A'zam the cruelties of an officer appointed by the Prince. The subjects under him were bewailing and lamenting.¹⁰⁶

In another letter to the same Prince, the Emperor protested against the appointment by him of a Superintendent of Police at Ahmedabad. He had been exercising tyranny on the people.¹⁰⁷

In yet another letter Aurangzeb complained against the failure of Prince A'zam to punish the tyrants in his province.¹⁰⁸

It was submitted to Aurangzeb that Ibrahim Khan, the governor of Lahore, had oppressed the Qazi of Kashmir. He was punished with diminution of one thousand horse.¹⁰⁹

"The Omrahs and Nawabs appointed to govern the provinces oppress the people in the most miserable manner imaginable."¹¹⁰

Grievances of the Ryots

The shortness and uncertainty of the term of a governor forced him at times to exercise oppression on the *ryots*. He tried to exact land revenue in advance by frequent resort to force. When the wretched peasant failed to pay, their wives and children were made into slaves. Unable to put up with this kind of treatment, the villagers fled from their homes and left the villages completely ruined.¹¹¹

The agriculturist suffered hardship at the time of payment of land revenue. Whenever he failed to give ready money, he suffered disgrace and torment. A good deal of thrashing

and forcible infliction of hunger and thirst made the villagers part with only paltry sums of money. It was surprising how this treatment often did not cause their death. They were bound to a tree and even whipped mercilessly. Sometimes the whips made 'wheels' on their bodies and 'broke teir skins.'¹¹²

Whenever the cases of tyranny came to the knowledge of the Mughal Emperor, he did not fail to take speedy action.

Khan-i-Dauran was notorious for his harsh nature. His treatment of the people at large was unbecoming. It was perhaps on account of this behaviour that his Kashmiri non-Muslim employees murdered him in Lahore in 1645 A.D. Khafi Khan is of the view that the curses of the oppressed people were responsible for his death.¹¹³

In Aurangabad the men of Braham Dev Sisodia cut down the crops of the peasants in 1666 for the use of their horses. On receipt of the news, Aurangzeb ordeed a diminution in their ranks.¹¹⁴

The heirs of Mardam Bandi petitioned Aurangzeb on 19th May, 1681, that Shahab-ud-din Khan had laid waste their village Rai't and captured the men and cattle of the village. They had committed no fault and had been wrongly captured and sent to the court. They terned it as a clear case of oppression. Aurangzeb ordered that the matter be decided in accordance with the *shar'a*.¹¹⁵

The contents of Muhtashim Khan's letter were read out to the Emperor in the Court on 6th September, 1681. He had complained that Sa'adat Khan, *zamindar* of Fatehpur, was indulging in a policy of oppression and the *ryots* were feeling distressed. His brother 'Abdul Danam had gone to the extent of killing eight employees of the *qanungo* of Fatehpur. The emperor was requested to issue a warning to the *Zamindar* against the repetition of such offences. The Emperor decreed that orders be issued to him for the chastisement of the culprits. He further remarked that the offenders, whoever they might be, must be punished.¹¹⁶

On 26th October, 1692, Qazi Khawaja 'Abdulla submitted that Mirak Husain, deputy *diwan* of Berar province, had made

a written complaint against the *gumashtas* of the *jagirdars* there. They were accused of having exercised excessive oppression upon the *ryots*. The news-writers had accepted illegal gratifications from them and therefore refrained from reporting against them. Aurangzeb asked Bahramand Khan to write to Mirak Husain in this connection. He was to warn the news-writers and ask them to submit factual reports. In case he found them guilty, he was to transfer them under intimation to the Emperor.¹¹⁷

Kohammad Mah, the *qazi* of Cambay, sent a report to the imperial court that the people there, no longer able to put up with the oppressive activities of Rustam Jang, *mutasaddi*, had migrated to Ahmedabad. The Emperor ordered that I'timad Khan, *diwan* of the province, and Mohammad Momin should be asked to investigate into the allegations and submit a detailed report.¹¹⁸

The same *mutasaddi* sent a report to the Emperor against a local merchant, Mohammad Hasan, for his maltreatment of the people in Cambay. Mohammad Ghali mace-bearer was ordered to fetch the trader to the royal presence.¹¹⁹

On 4th January, 1693, Aurangzeb ordered the dismissal of Mohammad Hayat, the commandant of Gooty. It was complained that he used to come out of the fort and persecute the people.¹²⁰

On 12th January, 1693, Aurangzeb received a report against Amar *Jana'dar*, employee of Raja Kishan Singh, *zaminidar* of Chanda, who was attached to the army of Mu'iz-ud-din at Churagarh. He was charged with having looted a number of villages. Maqsud Beg, *faujdar* commandant of Mohammadabad or Badr, had failed to chastise him. It was ordered by the Emperor to write a letter to Maqsud Beg asking him to put the culprit to death and inform the Raja.¹²¹

A report was received on 31st October, 1693, that in Karnatak Bijapuri, the *Desmukh*, in collaboration with the *faujdar* commandant of a certain fortress, had imposed a charge of two rupees on every inhabitant of the place as a result of which people had been deserting their homes. Bahramand

Khan was ordered to write to the *diwan* of the place to warn the alleged offenders against charging money from and committing oppression on the people.¹²²

Shaikh Hamid, commandant of Malapur, was alleged to have sent foot-soldiers and horsemen in the *jagir* of Mohammad 'Abbas, posted in the army of Qasim Khan Bijapuri in Karnatak Bijapuri. These soldiers persecuted the people and rendered them miserable. The Emperor ordered the Chief Bakshi Bahrahmad Khan to write to Sheikh Hamid to desist from such objectionable activities.¹²³

The people of Ghazipur *thana* put up a complaint against the persecutions of Mohammad Baqi Afghan. The Emperor ordered that they should be asked to address themselves to the *faujdar* of their area.¹²⁴ A similar order for bringing the case of oppression against Daulat Singh to the notice of the *faujdar* was issued again in the same month.¹²⁵

On 11th July, 1694, Aurangzeb ordered to bring to his presence the *gumashita* of Raja Sahu against whom complaints of the persecution of the *ryots* were received.¹²⁶

Maha Singh who was posted at Jodhpur, was dismissed from his assignment. He came to Toda Bhim, turned his brother out of his *jagir* and took it under his possession. He arrested one money-lender, seized from him Rs. 5,000 and after a few days put him to death. The Emperor ordered that they should write to the *nazir* of the place and appoint two mace-bearers to bring Maha Singh and Anup Singh to the court.¹²⁷

Mohammad Hasan merchant put up a complaint that Mu'azzam Khan had taken from him forcibly 3 horses costing Rs. 2,000 and paid him only Rs. 1,000. Aurangzeb ordered that Yar Ali should see that the balance was paid to the complainant by the respondent.¹²⁸

A number of traders put up a petition that the grain taken from them during the hunting expedition of Prince Mohammad Bedar Bakhsh, had not been paid for. It was ordered that Abdul Khair should send the traders to the *Diwan-i-Shikar* for the necessary payment to the complainants.¹²⁹

The secret news-writer of Berar province wrote to the

court that the *thanedars* appointed by the governor were molesting the people and the governor did not pay heed to their complaint. Bahrahmand Khan was ordered to bring this fact to the notice of the governor.¹³⁰

Diwan 'Abdul 'Alim, the royal *tan bakshi*, was accused of oppressive activities, and the deputy *kotwal* had been ordered to arrest him. When his men reached there, the *tan bakshi* showed readiness to offer fight and refused to see reason. Mukhtar Khan, *Mir-i-Arish*, and Muttalib Khan were ordered to go there with artillery and bring him on the path of reason, and, in case they remained adamant, to chastise them. After the '*adalat*' was over, it was submitted to the Emperor on behalf of Hamidulla Khan *kotwal* that Mukhtar Khan and Muttalib Khan had already been ordered to go for the chastisement of Prince Mu'iz-ud-din's men. The Emperor decreed that in that case Hamidulla Khan alone should be sent for the purpose.¹³¹

A woman filed a petition that the *gunashita* of Raja Kishan Singh, *zamidar* of Chanda, had imprisoned her son by way of persecution. A letter was ordered to be written to the *tahsildar* there to send the said *gunashita* to the court.¹³²

A letter was despatched in 1695 from the Court to the Raja of Jaipur. His attention was drawn to the fact that a number of peasants as Keso, Lal Chand, Dane, Churaman, Durga, Daya Ram, Murli, Dhanpal and Bhagirat of village Jagnerabe, belonging to the crown lands had been taken into custody by his men. The Raja was asked to see that these people were set free and warn his employees against tyrannizing over the *ryots* in the crownlands.¹³³

A despatch from 'Amil Faqir of *pargana jalalpur alias* Lonkheri revealed that some Rajputs residing there had been persecuting the local -people in a variety of ways and were responsible in laying waste a number of village. One of them had asserted that he was under the Raja of Jaipur implying thereby that he did not care for the authority of the Mughal Emperor.

The above facts were brought to the notice of the Raja in a

letter sent from the Court. He was instructed to appoint a man with a view to expelling these Rajputs from the *paragna* so that the *ryots* there could live in peace.¹³⁹

Basharat Khan, the *diwan* of Berar province, complained in writing to the Emperor against the tyrannical behaviour of Mohammad Sa'eed *darogha* in charge of the supply of grain there. Orders were issued for his transfer and appointment of another person in his place.¹³⁵

Yasin Khan, *thanedar* of Karraabad, submitted that Mohammad Wazir, *thanedar* of Bahmanwar, was guilty of oppression upon the people. He recommended the removal of Mohammad Wazir and appointment of Mohammad Hussain, son of Sayyid Ibrahim. The Emperor approved of this and ordered at the same time diminution in the rank of Mohammad Wazir.¹³⁶

The *gunashtas* of Prince Mohammad Mu'azzam Bahadur Shah were accused of molesting Maulvi 'Abdulla of Sialkot. The Emperor ordered that Mun'im Khan should send a letter under his own seal to the *gunashtas* through Lutfulla Beg mace-bearer.¹³⁷

Faqir Mohammad, holding a rank of 500 *zat* and 100 *swar*, and posted in the army of 'Umadtulmulik Khan, Feroz Jang, had gone to Haidrabad province and there forcibly married a girl. He was punished with diminution of rank by 100 *zat* and 20 *swar*.¹³⁸

On 12th August, 1704, the petition of Mirza Safavi Khan was placed before the Emperor. He had submitted that property worth 4 lacs of rupees in his ship in the sea near Surat had been carried away by the Europeans during the tenure of Mohammad 'Ivaz *alias* Ikhtiar Khan, the dismissed *mutasaddi* of Surat. 'Ivaz Khan had seized the property from them and taken it into his possession. On the request of the applicant, 'Inayat-ullah Khan was asked to get the property restored to the owner without delay. We learn from the newsletter of 30th August 1704 that he was taken into custody and then imprisoned at the court of the *diwan*. He could not be presented before the Emperor on account of ill-health. He was ordered to go to the house of Amir Khan and give a written bond.¹⁴⁰

Report came from Saharanpur on 29th August 1704 that Bahar Safshikan Khan, the dismissed *zamindar* of Lakhī Jungle, had gone to the village of Sultanpur in *pargana* Badhiana and was exercising tyranny on the people there. Mace-bearers were sent to the place for *sazawali* and to fetch him from there.¹⁴⁵

Complaints against Faujdars

When the *ryots* could no longer bear the excessive acts of oppression on the part of the *faujdars*, they rose in rebellion, and, as a result, suffered penalty.¹⁴⁶

Even the foreign travellers were not spared. Peter Mundy had to bribe off the *faujdar* of Banars when all his carts were confiscated in September, 1632, under the orders of that official. The carts were required for transportation of the family and household staff of Qalij Khan, the former governor of Allahabad.¹⁴⁷

A Hindu merchant petitioned the Emperor on 20th January, 1667, that Mohammad Khan *faujdar* had seized from him a large amount of money. Aurangzeb ordered that mace-bearers be sent with him in order to bring the erring *faujdar* to the royal presence.¹⁴⁸

A report was received from Bengal that Muzaffar Khan, son of Nasir Khan, *faujdar* of Makhsudabad, was exercising tyranny upon the *ryots*.¹⁴⁹

Complaint was received against Latif, *faujdar*-commandant of Bijagarh (holding a rank of 500 *zat* and 300 *swar*) to the effect that he had usurped a horse from 'Abdul Ghani and other merchants by way of *rahdari*. His rank was reduced by 100.¹⁵⁰

The *ryots* of the *pargan* of Dahokasal sent a petition to Aurangzeb against the tyranny perpetrated by Shamsuddin, *faujdar* of the place. Orders for his replacement were issued.¹⁵¹

On a complaint received from the *ryots* and *qanungos* of the *pargana* Marha orders were issued for the transfer of the *faujdar* and appointment of another.¹⁵²

A petition was received from Safshikan, *jagirdar* Auran-gabad, that as a result of the tyranny exercised by Bahadur

Khan *faujdar*, *ryots* were taking to flight. A letter was ordered to be addressed to the governor to stop the recurrence of such incidents.¹⁵³

The people of *paragana* Ambah Banur made a complaint against the oppressive policy of 'Azizullah, *faujdar* of the place. The Emperor ordered the report about the rank held by him.¹⁵⁴

'Abdul Razzaq, *faujdar*-commandant of Badami fortress was alleged to have forcibly removed and taken into his possession all the belongings from the house of 'Abdul Rasul, *zamindar* of the place. Hearing the complaint, Aurangzeb ordered that one macebearer be despatched to make him return all the articles usurped in this objectionable manner.¹⁵⁵

The *vakil* of Mohan Singh commandant wrote to the Court that the son of 'Abdullah Khan, *faujdar* of Ajmer, had gone to the *jagir* of his client, shown high-handedness and forcibly seized money. He had requested the Emperor for a macebearer who should get the money restored to his client. The Emperor ordered that he should be asked to write to the governor of Agra about this case.¹⁵⁶

Damage to Crops

Another serious complaint of the agriculturist was that irreparable damage was done to his crops during the march of imperial armies. When the soldiers passed through the villages, they plundered every thing they could lay had on food, supplies, grass, straw and even cattle. In order to procure fuel they would go to the extent of burning houses of the poor peasants.

As if this was not enough, they imposed *begar* on and forced to carry their baggage.¹⁵⁷

The Mughal Emperors being keenly interested in the welfare of the agriculturists, took particular care against any damage to them by imperial officers. Special steps were taken to protect the crops during the march of imperial armies. Inspectors were appointed for the measurement of damaged crops and for payment of the loss sustained.

"To guard against damage to standing crops in times of

warfare", during the reign of Akbar, "a special staff was recruited for the purpose of assessing such damage and paying the cultivators its assessed value."¹⁵⁸

The system introduced by Akbar continued throughout the Mughal period.

When during the Spring of 1609, Jahangir left for hunt-ings, he writes: "As the *Rabi Fasl* had arrived, for fear of any damage should happen to the cultivation of the *ryots* from the passage of the army, and notwithstanding that I had appointed a Qur Yasawal with the band of *ahadis* for the purpose of guarding the fields, I ordered certain men to see what damage had been done to the crops from stage to stage and pay compensation to the *ryots*."¹⁵⁹

Prior to his journey to Kashmir in 1632, Shahjahan issued orders for the protection of crops. The punishment fixed for the cutting of one ear of corn was amputation of hand and payment of double the price of the damage to the cultivator. In case, however, the march of the army through the fields could not be helped in view of the narrow paths, inspectors were appointed for the assessment and payment of the actual damage suffered by them.¹⁶⁰

The same practice was continued by Aurangzeb. He had a regular department whose duty it was to find out the extent of damage to the standing crops and pay compensation to the suffering cultivators. In the Jaipur Newsletters we come across two kinds of officers in this department. One was *amin* and the other was *darogha*. On 17th November, 1701, Zia Ullah was appointed *darogha* and Khwaja Mohammad Shah, *amin* of the right wing of the army and Sheikh Hidaya Keesh and Gulam Mohammad were appointed respectively *darogha* and *amin* of right wing.¹⁶¹

Ram Singh, son of Ratan Singh Rathor, *faujdar* of Jalaar, complained to Ruhulla Khan at the imperial Court on 5th May 1681, that the movements of the rebel and the royal armies during the war had laid waste the country-side and ruined a large number of villages in his *faujdari*.¹⁶²

On 31st August, 1681, Asad Khan submitted that he had

received information from the *gumashta* of Rao Anurudh Singh that the crops in Bundi had been ruined due to the movement of troops and the uprooted *ryots* were finding it difficult to resettle in their homes. The Emperor ordered inquiries to be made to find out if there could be any alternate route for the troops.¹⁶³

During his march from Ajmer to Burhanpur, it was brought to the notice of Aurangzeb on 12th September, 1681, that an extensive damage had been done to the standing crops. He ordered that 'Abul Qasim, *Khush Manzil*, should be asked to pay the entire amount of damage to the cultivators concerned.¹⁶⁴

Yar Ali *darogha* in charge of the protection of crops, brought to Aurangzeb's notice on 16th September the complaints of the *ryots* about the destruction of crops as a result of the march of the royal army. The Emperor ordered that the complainants be paid Rs. 1,000 out of the crownlands.¹⁶⁵

On 21st September, the Emperor asked Baharahmand Khan to find out the extent of the damage to crops suffered by the cultivators on account of the marching of the imperial camp that day. The Superintendent of Artillery was ordered to remain behind and report names of the *darogha* in charge of the protection of the crops and of the artillerymen posted for the purpose.¹⁶⁶

The Emperor told Prince Shah 'Alam on 26th October that there was an extensive damage to the crops as a result of the march of his army. He was asked to pay compensation to the cultivators right from the start of the march of his army from Ajmer.¹⁶⁷

A representation of the *zamindars* of Thana Mor and Rahmatpur etc. was submitted to the Emperor on 26th November 1699. They had offered to pay Rs. 10,000 by way of present to the Emperor in case their crops were spared from damage and destruction ¹⁶⁸(due to the movement of troops.)

Aurangzeb during his march in the south, told Tarbiat Khan, *Mir-i-Atish*, On 17th November, 1701, that extensive damage had been caused to the crops as a result of the movement of the army.¹⁶⁹

A report came to the Emperor that the soldiers were cutting the standing crops and exercising tyranny on the *ryots*. It was ordered that Hamid-ud-din Khan Bahadur be posted in the rear of the army and Tarbiat Khan Bahadur should be transferred from there and be put in charge of the protection of crops.¹⁷⁰

Oppressions by Tax-Collectors

The Mughal Emperors never failed to issue orders for the abolition of various duties termed as *abwabs* or illegal cesses. Akbar was the first Emperor who abolished these exactions.¹⁷¹

Jahangir abolished *tamgha* and *mirbahari* and other illegal-cesses which the *jagirdars* used to charge forcibly from the people.

By a *farman* issued on 20th November, 1665, Aurangzeb declared a number of duties as illegal. The *Mirat* has given a detailed list of such duties.¹⁷³

Khafi Khan is of the view that the taxes abolished by Aurangzeb by his *farman* amounted to crores of *rupees*.¹⁷⁴ He, however, feels sceptical of the efficacy of the *farman*. He does not conceal his feelings about Aurangzeb's orders which usually remained uncomplied with. Not that this great Emperor failed in taking prompt action against the culprits. He took steps in meting out proper punishments to the guilty officers. He ordered their dismissal or diminution in their ranks. He sent mace-bearers for the punishment of the erring *zamindars*. The mace-bearers did stop the officials concerned from collecting the illegal taxes. This was only for a few days after which they were bribed off. The *jagirdars* who had been punished for these illegal taxes, usually succeeded in getting the diminution in their ranks restored with the help of some parton at the court and the *vakils* whom they had to pay. Thus the remission of majority of cesses failed of implementation. Khafi Khan regarded the *rahdari* tax as the most obnoxious of taxes. It had been charged by the *faujdars* and *jagirdars* with utmost severity from the traders, needy and distressed travellers, and continues to be levied with the same rigour in the whole of Mughal India. Khafi Khan further re-

marks that when the *zamindars* were convinced that they were to be answerable before none, they began to levy this tax in their own areas with greater severity than in the *khalsha* lands. The result was that the prices of articles invariably got doubled by the time they reached their destination. He laments that there was always trouble on the highways, in public places and on thorough-fares; the life of the people using them was at the mercy of the *zamindars* and *jagirdars*. Thousands of travellers lost their lives in the tumults and wranglings in those places. He felt so distressed at the whole situation that he seemed to have lost faith in Aurangzeb's sense of justice and good administration and pinned his hope in the justice of God. The tyranny from which people were suffering could be removed only if He sent a just and strong ruler capable of meting out condign punishments to these evil doers.¹⁷⁵

Johan Francis Careri, the Italian traveller, who visited India in 1695, remarks: "After Aurangzeb had prescribed himself this sort of Life (vegetarianism), he ceased to be Bloody as before, and on the contrary became so mild, that the Governors and *Omrahs* did not pay him the Duty they ought; knowing his Mercy would never suffer him to punish them. Thus the Poor were oppressed by the great without knowing who to have recourse to"¹⁷⁶

The Jaipur new-letters corroborate the statement of Khafi Khan. The Provincial News-letters are replete with the complaints sent by the Centre to the Jaipur Raja regarding the charging of illegal cesses by the *thanedars* and *zamindars* from the crownlands in spite of orders to the contrary. Some of these cesses are quoted below.

We learn from one of these letters that Haji 'Ali Dost, *jagirdar* of some village in *pargana* Sa'dabad, had complained against the *thanedar* of the place who charged from them illegal cesses. The letter from the Court advised the Raja to pull up the *thanedar* and the *peshkars* and warn them against molestation of the people in his *jagir*.¹⁷⁷

In another letter the attention of the Raja was drawn to the complaints of one Harkishan, a wine merchant. The man had purchased goods worth Rs. 449, to be taken to Daryapur

and paid the due taxes to the tax-collectors at Shahganj and obtained their receipt. Even then Kosal *thanedar* of *pargana* Sa 'dabad confiscated three oxen and all the goods along with four of his men whom he took into custody. The Raja was asked to issue prohibitory orders to the *thanedar* concerned who was to restore the goods, explain his conduct and promise not to repeat the offence. A mild advice was tendered to the Raja that such acts were not conducive to the prosecution of trade, were bound seriously to affect the imperial revenue and bring bad name to him.¹⁷⁶

In yet another letter of May 1695 from the Court to the Raja, his attention was drawn to the activities of the same *thanedar*. This time he collected illegal taxes from the village Kajrole out of which he kept to himself Rs. 600 as cess of guns and *faujdari* and deposited the balance in the treasury only after heated arguments. The letter ended with the remarks that the same *thanedar* was in the habit of receiving money from other villages as well in the same (tyrannical) manner.¹⁷⁹

Jahan and Khwaja Ahmed and other traders had written to the imperial court that they were bringing 300 camels from the province of Multan. When they came to Islamabad (Mathura), Raja Bishan Singh's men seized from them Rs. 3,300 and at the Chambal ferry at Dholpur they charged from them toll tax. A letter was addressed from the Court to the Raja to see that there was no recurrence of such offences in the future.¹⁸⁰

Besides these cases recorded in the Provincial News-letters, there are a few others mentioned in the *Akhbarat*.

Amarat Khan, *faujdar*-commandant of Ahmadnagar, was alleged to have charged from the people Rs. 5 per ox as tax. When the Emperor learnt of this, he ordered a letter to the issued to the said Khan to desist from charging this forbidden cess and in case of repetition of the offence to face royal censure.¹⁸¹

Sharif Khan, *karori* of Ganj, submitted that the *faujdar*s had forcibly charged tax from the *Banjaras* who were bring-

ing corn for the Emperor from the side of Haidrabad. They refused to accept the royal *farman* of tax-exemption in their case. The Emperor ordered that Nazim Beg, mace-bearer, should be deputed with the *Banjaras* and the entire amount seized from them as toll tax was to be got restored to them. The *faujders* were to be forbidden from charging this tax in the future.¹⁸²

Orders were despatched to the *faujders* of Etawa and those in the neighbourhood of Agra to see that the *thanedars* did not levy the *rahdari* tax on the traders. They had to issue similar orders to their *gumashtas* and warn them that non-compliance with these orders would be detrimental to their interests.¹⁸³

The Emperor told Kalim-ud-din *faujdar* of Jaler, that he had received complaints against his *gumashtha* Khuda Quli for charging *rahdari* from traders and travellers. The *faujdar* was asked to give him proper chastisement on receipt of further complaints of this sort.¹⁸⁴

The *vakil* of the Jaipur Raja posted at the court at Agra sent him a letter on 3rd June, 1695. He mentioned therein that the *kahars* who had brought melons from Shahjahanabad for the governor of Agra had been forced by the employees of the *faujders* under his Exalted Highness to pay *rahdari* at every *chowki*. They should have at least spared the articles of the *Narwab* (governor) who had brought this to the notice of the *vakil*.¹⁸⁵

Aurangzeb ordered on 15th June, 1695, a letter to be written to the *faujdar*-commandant of Karnool asking him to prevent the *kotwal* there from levying the forbidden tax of one rupee from the windows.¹⁸⁶

Persons engaged in the sale of leather goods lodged a complaint in the *adalat* that Sarbrah Khan *Kotwal's* men were charging from them illegal tax on leather goods. They requested the Emperor for the exemption of this duty.¹⁸⁷

Oppressions against Artisans

We are asked to believe that an artisan laboured under severe restraints. If a noble required his services, he sent for

him. The poor fellow had no alternative but to work for the 'Unfeeling lord'. The remuneration was paid not according to the value of the former's works, but in accordance with the caprice of the latter.¹⁸⁸ It was not surprising if sometime the artisan got nothing whatever in return for his labour.¹⁸⁹ According to Bernier, the long and terrible whip, hanging at the door of every noble, was a source of constant terror to him. He was extremely lucky if he did not receive this in part payment.¹⁹⁰ The governor's men were a sort of perpetual drain on his meagre income. They exacted fees from him under the pretence of pressing him from his daily work into gaining the service of their master.¹⁹¹ A craftsman saw no advantage in gaining distinction: for having acquired a little more money than his fellow workers he might be compelled to part with it.¹⁹²

In 1636, the governor of Gujarat required cloth for his servants. He asked the weavers' brokers at Baroda to sell the cloth to him at his own price. At their refusal to comply with his order, he cast them into prison. The weavers, however, showed a grim resolve and left the city in a body. They did not return unless assured by the governor of a better treatment in the future.¹⁹³

A tailor in the service of a Pathan was seized by some servants of a governor for their master's service. As the Pathan rushed to the help of the tailor, a soldier put to death the brother of the Pathan. This developed into a fight in which both the parties sustained heavy losses.¹⁹⁴

Complaints of the Merchants

Almost all the European travellers who visited India during the reign of the Mughals, are one in their condemnation of the tyrannical rule of many a provincial governor and other high officers. Their complaints were manifold—

1. The Emperor would open their chest and boxes and keep whatever he liked for himself.
2. Their goods were seized by the governors or other high officers on the pretext of presenting them to the Emperor.

3. The provincial governors demanded money from the merchants.
4. Their articles were searched at the customs houses.
5. Their articles were seized by the officers and arbitrary prices were offered to them.
6. Sometime they were not allowed to leave the port without permission of the authorities.
7. Tolls were demanded from them.
8. There were some minor complaints.

Some of these complaints may be true: but a close analysis of the accounts shows that the foreign merchants were also in many cases at fault. It was the usual practice for the customs-officials to search all the boxes and packages at the port and it was the usual practice of the merchants, as at present, to avoid the payment of customs. They tried to smuggle in commodities or to pay less custom than required. A thorough search of the articles took long time and the merchants felt that their patience was taxed. The rightful measures taken by the authorities to stop the unauthorised inland trade carried on by the foreign travellers was taken by them as iniquitous. Then there was the practice of presents. It is a ridiculous statement that the Mughal Emperors or the Princes of the royal blood were anxious to take articles from the foreign merchants without making any payment. Money was never the consideration with the Mughals. They only liked the curios, and made their own selection.

It may be that their orders regarding the payment of a certain article were not always carried out by the officials resulting in the complaints by the merchants. So far as the seizure of the articles at arbitrary prices was concerned, we are to remember one thing. It seems it was always a tendency of the merchants to expect and demand a much higher price for an article than it was justified for them to charge. The government would at such times intervene and fixed prices for articles. This caused resentment among the merchants who were bent upon reaping larger profits. If a foreign merchant had to suffer for non-payment of toll at certain places, he had

only to blame himself for this. There was another significant point to remember. The Mughal authorities did not always like the movement of the European merchants in India. The former often suffered heavy losses on account of the activities on the seas, and the pirates, almost all of them, belonged to European nations. The foreign merchant companies in India encouraged their sea captains to loot Indian ships laden with merchandise and imprison the crew. To this they resorted sometime, no doubt, to get their demands (which were not always just and fair) accepted and their grievances redressed.

In the absence of an effective and efficient navy the only possible check on the nefarious activities of the foreign culprits was to put pressure on their fellow countrymen in India. The spirit of obstinacy exhibited by the latter was bound to inflame the already excited feelings of the Mughal authorities who had to be harsh on the foreign factors. Hence the clamour of high-handed treatment of the Mughal provincial governors.

It may be that in certain cases their complaints were genuine. Some governors and high officers may have been guilty of demanding and accepting bribes from the merchants. But were those merchants and the merchant companies not equally guilty in this respect? The offer of bribe is no less a crime than its acceptance. And in many cases do we come across instructions issued by higher authorities to the English factors to bribe the governors and high officers for various favours. We come across frequent references to the fact that whenever the English merchants found some difficulties in the way of their trade, they thought of resorting to force on the high seas in order to intimidate the Indian authorities. That is never the way of peaceful merchants living in foreign lands.

Manucci complains that the customs-officers exercised much severity upon travellers and deprived them of the money they found upon them. They felt no mercy for the poor, and, when they found no money with them, they seized from them their shirts, coats and sheets. Manucci, however, makes

an extreme statement which is difficult to believe that after rifling the travellers of all their possessions, the customs-officers would put them to death.¹⁹⁵

Complaints were received by Jahangir against the 'tyrannical injustice' done by Muqarrab Khan, the customs-officer of Surat. Hawkins had complained against Muqarrab Khan's seizure of his goods and non-payment of the price. Jahangir sent for the officer and ordered the attachment of his goods.¹⁹⁶

The English factors at Burhanpur told Afzal Khan, the *Diwan* of Prince Shahjahan, that they had undergone 'insufferable injuries' at the hands of the Prince's servants and officers in Surat. They had suffered from 'other the king and Princes subjects elsewhere: That we weare not only abused in our persons, dispoyled of our goods, but debarred of our trade, which hath been and now is graunted us by their sundry firmaens extant.' They told him that though they had tried to get their grievances redressed, they had failed in their efforts. Rather more sufferings were heaped on them. They wrote to the English President and Council at Surat: 'We...Must be playne and give them to understand that wee intend to right our wrongs by our own force, seeing we cannot finde justice by the Prince, to whom we are dayly sutors.....'.¹⁹⁷

Sir Thomas Roe complained that Emperor Jahangir caused his chests to be privately brought to him and opened, but finding nothing of his liking he returned all.¹⁹⁸

In 1614, Sir Robert Shirley was abused at Laribunder and when he went to Thatta, he was used very unkindly by Mirza Rustam, the governor of Sind. The latter took away from him jewels and other things of his choice on the pretext that they were to be sent to the Emperor.¹⁹⁹

Roe complained that Prince Khurram had intercepted the presents and goods on their way up, to satisfy his own 'base and greedy inclinations'.²⁰⁰

Peter Mundy grumbled against the 'bad' governor of Bihar whose cruel nature was a great impediment in the way of the prosecution of trade by the English in India. The same traveller complained about the tyranny of the governor of

Ahmadabad who exacted a sum of Rs. 4,000 from the East India Company.²⁰¹

In march, 1636, the governor of Gujarat forced the Dutch to pay Rs. 5000. His covetousness made him an object of general hatred there.²⁰²

The English complained that the customs-officer of Surat in 1648 ruined the trade of the place by oppressing and 'robbing' men of all sorts. The 'villaine' either seized the goods of the traders or shared the profits of whatever was brought and sold.²⁰³

Again, in 1669, there is mention of the gross injustice done by the customs-officer of Surat. He placed many obstacles in the way of the English trade and was always actuated by the feelings of pride and self-interest. They had to offer him many presents as was done by the French and the Dutch.²⁰⁴

Aungier was forbidden by the customs-officer of Surat in 1672 to depart for Bombay. The latter demanded from him a 'round sum of money.' The Council was determined not to yield on this point. This enraged the customs-officer who sent a strong force of horse and foot to take possession of the factory house and the neighbourhood. The English endured all the violence perpetrated by the guard and handed over at the demand of the customs-officer all the arms and trumpet of the factory. They remained adamant and showed no inclination to part with the money. The customs-officer, however, persisted in his demands and did not withdraw his orders unless he had forced from the Company's Indian broker Rs. 500 threatening to seize his estate, house, wife and children in case of non-compliance with his demand.²⁰⁵

At one time Roe was upset because Prince Khurram ordered his goods to be sealed. He had done so because his officers had not received custom on them and he desired to get them opened in his own presence. On the complaint of Roe to Jahangir, Prince Khurram undertook to pay for every thing that had been taken by him from the Ambassador by force.²⁰⁶

Then there were complaints about the seizure of goods and the payment of indifferent and arbitrary prices for them.

William Hawkins, while in Surat in 1604, was 'misused' by Muqarrab Khan, the customs-officer of Surat and Bombay. He took possession of his goods, and kept what he liked for himself 'giving me such a price as his own barbarous conscience afforded'. For three months he was kept on empty promises. In the mean-time he came to Hawkins's house three times, 'sweeping me cleane of all things that were good.'²⁰⁷

When Hawkins met Jahangir at Agra, he made a sweet present to him and lodged a complaint against Muqarrab Khan. Jahangir told him that he had already received reports against that officer and assured him that he would 'remedie all'. When, again, there was complaint by Hawkins, the Emperor angrily ordered Abul Hasan, his 'Chiefe vazir', to see the debt discharged. Thus Hawkins received from Abul Hasan the sum that Muqarrab Khan had taken from him.²⁰⁸

In 1623, the customs-officer of Surat appropriated two chests and three bales of tobacco belonging to the East India Company.²⁰⁹

The Council at Surat advised Bangham in March, 1633, to sell cloth at Burhanpur to Mahabat Khan at any price he thought proper. He was asked not to hazard controversy with that noble about it lest he should force from them the 'whole complement'.²¹⁰

In April 1633 the English at Surat feared that that the customs-officer there would buy the lead at his own price. It was bound to remain there unsold if the price were not accepted.²¹¹

Towards the end of the same year, the Mughal officers at Biana seized saltpetre from the English and offered only half the English price for it.²¹²

In 1650, Shahjahan got displeased with Mu'iz-ul-mulk, the customs-officer of Surat, as he had done injustice to the merchants. The governor of Gujarat seized all the saltpetre provided by the English at Ahmedabad and one consignment of theirs from Agra.²¹³ In about 1655, the servants of the

East India Company at Patna and Rajmahal were arrested and their privileges were violated.²¹⁴ The English factor at Agra wrote in the same year that he could not let the salt-petre remain there for long. There was every likelihood of its being confiscated by the ministers, as it had been done previously.²¹⁵

We hear about the 'madd' government to Thatta in June 1656. The real authority there rested with the wife of the governor. She did much wrong to the traders by taking awayd their goods from them and paying not even half the market price for it.²¹⁶

There was yet another complaint. The English were not authorized to leave the port without the permission of the authorities.

In the month of November, 1619, Ishaq Beg, the customs-officer of Surat, tried to induce the English to retain part of their fleet that was going to sail for England. He wanted their help against a probable attack of some Malabar junks. Soon after some of the young factors returning home late were set upon by a number of persons sent by the customs-officer.²¹⁷

They beat and wounded them along with a poor messenger. The English shot five times into the air ; but one shot of theirs wounded one of the Indians in the neck. The wounded man was taken to the customs-officer and the report was spread that he was dead. When Ishaq Beg sent for them to answer for this, they refused to go without a pledge of safety. The supply of meat and drink was refused to the English and their servants were cast into prison. At a conference arranged later on. Ishaq Beg abused and threatened the English. The English factors petitioned Afzal Khan, the *Diwan* of Prince Khurram, Jamshed Beg, the new customs-officer, and Prince Khurram himself against the maltreatment meted out to them by Ishaq Beg and demanded redress.²¹⁸

The English at Surat complained that they dared not dispose of their ships according to their wishes or for fear of making the 'rogue' customs-offier angry.²¹⁹ Some years later in 1636, they complained again that their president was not

allowed to go on board the 'Discovery'. Orders against him were withdrawn only when they learnt that the native ships would also be detained in consequence.²²⁰ In 1639, their President was again not permitted to repair on board.²²¹ In 1651, the customs-officers of the same place forbade the freighting of the English ships bound for Gambroon unless the vessels of the Mughal Emperor were laden.²²² A year before, the customs-officer of Surat had not permitted the English to finish a small vessel which they had begun and only half finished.²²³

The English complained that sometime they were not allowed to march from a city in India without permission. On learning that Nicholas Bangham, the English factor, had left Broach without his house. When the *kotwal* did not find him there, he punished the permission, Khan-i-A'zam sent the *kotwal* to his two servants left by Bangham. They received one hundred stripes each. The porters of the city gates were also whipped for permitting him to depart.²²⁴

Punishments

Our authorities inform us that the Mughal Emperors did not fail to take suitable action against any officer whenever oppressions of any kind were brought to their notice.²²⁵ Punishments varied according to the nature of the offence. The governors of the provinces were warned not to be negligent in taking measures against tyrannous officers. With regard to cases of a less serious nature, only reproof would do. Complaints were inquired into and suitable punishments were awarded.²²⁶ Diminution of rank, dismissal, imprisonment and execution could be the various punishments. We learn that even the common people were not slow to assert and exercise their rights. They would submit a petition to the Imperial Court against the appointment of a governor who had earned notoriety somewhere else.²²⁷ They tried all sorts of measures in acquainting the Emperor with their grievances.²²⁸ In case their efforts did not meet with success, they took resort to tricks and apprised the Emperor of the real situation and got the officer punished.²²⁹

While Akbar was in his way to Ajmer in 1562, the keeper of the imperial leaords 'waxed proud' and forcibly took off and appropriated a man's pairs of shoes. When the cries of the lamenting owner reached Akbar's ears, he discovered the truth, called the wrong-doer into royal presence and ordered his feet to be cut off. It was rather a harsh punishment, although Abul Fazl has tried to justify it.²³⁰

When Akbar was at Dhar (Malwa) in 1564, a woman complained to him that an officer by the name of Mohammad Hussain, had committed various acts of tyranny against her minor daughter and plundered her house. Akbar ordered that he be seized and punished. Abul Fazl does not mention the punishment, but it appears from the nature of the crime and the tone of his writing that the offender was perhaps awarded capital punishment.²³¹

An order was promulgated by Akbar in 1582, on the suggestion of Raja Todar Mal, to stop the tyranny of the collectors. The excess rent that they charged from the cultivators, was to be regarded as part of the collections.²³²

Another order was issued in same year to protect the peasantry from the oppression of the malefactors. The commander, the fief-holder and the collector were to get together against those who dwelled in ravines, and taking advantage of the ruggedness of their country, extended the arm of oppression to the peasantry. They were ordered first to admonish such persons, and in case that proved ineffectual, to chastise and punish them. If the soldiers were injured in these operations, the culprits were to be fined.²³³

Raja Todar Mal complained to Akbar in 1580 that at a time when imperial armies were engaged in the difficult task of crushing rebellion, Khwaja Shah Mansur was pressing for demands and causing oppression. The Khwaja was dismissed from his high post and given to Shah Quli Khan Mahram as a prisoner. Sometime afterwards, however, he was released and re-instated as *vazir*.²³⁴

Constant complaints of the tyranny and oppression on the part of Haji Ibrahim Sirhandi, the *Sadr* of Gujarat, reached

Akbar's ears. He was ordered to be arrested and imprisoned in the fortress of Ranthambor where he died in 1586.²³⁵

On his way to Kashmir in 1589, Akbar arrived at Gun-
achor in Jullundur *Sarkar*. There it was reported to him that
Allah Vardi, the agent of Sadiq, and *shiqdar* of Tiba Hanu and
Raiz had been oppressing the weak. 'Azdu-d-daula, Shah Beg
and Qasim Beg were ordered to sit in judgement on him. As
he was found guilty, how was awarded capital punishment.²³⁶

It was reported to Akbar in 1595 that some persons ex-
acted tolls at ferries. An order was issued to punish the of-
fenders.²³⁷

A favourite servant of Rai Singh was accused of oppress-
ing the people. When Akbar asked for explanation, the Amir
concealed the matter and reported that the said servant had
fled. The Raja was excluded from performing *Kornish* (1596).²³⁸

Shaikh Sultan, a learned man of Thanesar, was appointed
karori there. He exercised tyranny upon the people and satis-
fied his old grudges. When Akbar arrived there on his way
back from the Punjab in 1598, the matter was reported to
him. The Emperor ordered an enquiry as a result of which
the Shekh was ordered to be hanged.²³⁹

Next year in 1599, Khwaja Malik 'Ali, Bakhshi of the camp,
was censured for tyranny and removed from his post. Later
on, when he showed repentance, he was forgiven and taken
back into service.²⁴⁰

While Viceroy of Allahabad, Jahangir inflicted most cruel
punishments on his three servants who had absconded. One
of them was flayed alive, the other was castrated and the
third was beaten to death. Akbar could have come in person
to Allahabad and punished the Prince but for the serious
illness of his mother. Later on when the Prince came to the
capital to mourn the death of the Queen Mother, the Emperor
had him arrested and conveyed to the female apartment. There
he was to be supplied no wine and had to remain in a closet.
This was a very harsh punishment for him, and, only at the
intercession of the royal ladies was he relaxed after ten days.²⁴¹

Jahangir ordered that government officers and the *jagirdars*

should not forcibly seize the lands of the subjects and cultivate them for their own benefit.²⁴²

It was reported to Jahangir that the eunuchs of Sa'eed Khan oppressed the poor and tyrannized over the weak. When Sa'eed Khan was appointed governor of the Punjab in 1605, Jahangir sent him a message that he would not put up with the oppressions of great or small; and if any cases of cruelty or harshness of his relations reached the Emperor, Sa'eed Khan would receive punishment. According to some accounts, the Khan gave a bond that if his people were found to be oppressive, he would forfeit his head.²⁴³

It was reported to Jahangir in 1605 that two persons, Raju and Amba had been making their livelihood by practising oppressions and tyranny. The Emperor awarded Raju death punishment and on Amba he levied a fine of Rs. 15,000.²⁴⁴

When in 160, Jahangir was informed for the second time that Murtaza Khan, the governor of Gujarat, had failed to restrain his relations from committing oppressions on the people, he ordered his transfer and appointed another governor in his place.²⁴⁵

In 1614, the people of Thatta complained against the tyranny of the newly-appointed governor, Rustam Khan. The Emperor Jahangir sent one of his servants to bring him to the Court. He was handed over to Anirai Singh-Dalan who was to inquire into the complaints against him. If found guilty he was to receive prompt punishment as a warning to others.²⁴⁶

It was reported to Jahangir in 1618 that the brothers and sons-in-law of Jahangir Quli Khan, the governor of Bihar, were exercising tyranny on the people. Orders were issued for the dismissal of Jahangir Quli Khan and the appointment in his place of Muqarrab Khan.²⁴⁷

Shahjahan was informed in 1639 of the excesses of the customs-officer of Surat. Virji Vohra, a leading merchant of the place, had suffered much at his hands. The offender was called to the Court to answer in person. Mu'iz-ul-mulk was sent to make an inquiry on the spot and collect full information regarding the grievances of the people. As a result of the

inquiry, the said officer was removed from his post,²⁴⁸ and Mu'iz-ul-mulk was appointed in his place.²⁴⁹ In 1650, Mu'iz-ul-mulk got into difficulty. He was accused of causing injury to the merchants in Surat and of running some villages near that city. Shahjahan at first ordered diminution of his rank and then his dismissal from service.²⁵⁰

Nasir Khan, the governor of Gujarat previous to Murad, became notorious for his cruelties. The merchants of Ahmedabad complained against him to Shahjahan. An inquiry was ordered as a result of which Nasir Khan was sent away as a prisoner to the fortress of Rohtasgarh to sigh away his days there. His property was confiscated.²⁵¹

Aurangzeb's strong sense of justice revolted whenever he came to know of any sort of oppression perpetrated by any officer. He would issue commands to the governors to punish the guilty without delay after making full inquiries.²⁵²

When Prince Mohammad A'zam inflicted death punishment on an oppressive official, Aurangzeb administered him a mild reproof for his unpardonable haste.²⁵³

When reports about the oppressions of Kartib Khan, the customs-officer of Surat, reached royal ears, Aurangzeb summoned him to the Court. Before, however, he could reach there he was ordered by the Emperor to swallow poison.²⁵⁴

In 1677, the merchants of Surat grew discontented with Chias-ud-din Khan, the customs-officer of the place. Headed by Mirza Mu'azzam, they lodged a complaint against him with Mohammad Amin Khan, the governor of Gujarat, and then with the Emperor. As a result of this, Ghias-ud-din was dismissed.²⁵⁵

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1. Barani, pp. 289-92; Lal, pp. 252-54.
2. *Qaraunah* Turks, p. 49.
3. ('Isami, pp. 177-78; Habib & Nizami, p. 300.
4. 'Afif, pp. 345-49; Elliot & Dowson, vol. 111, pp. 357-60. This is a case where the poor complainants were punished and the dishonest super-

intendent of the imperial mint was rewarded for his dishonesty, and the Sultan was cheated by his own minister.

However, Kajar Shah was removed from office after some time on another excuse: 'Afif, p. 349.

5. *Rehla*, pp. 170-71.
6. *Afif*, pp. 472-73.
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15. *Ibid.*, II, p. 629.
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33. *Ibid.*, 122-23.
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41. *Ibid.*, p. 207.
42. *English Factories, 1624-29*, p. 270.
43. Peter Munday, ii, p. 40.
44. *Ibid.*, p. 122.
45. *English Factories, 1634-36*, p. 28.
46. *Ibid.*, p. 280.
47. *History of Shahjahan* by B.P. Sexena.
48. Manucci, i, p. 197.
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50. *Ibid.*, pp. 303-4.
51. *Short History of Aurangzeb*.
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53. Manucci, i, p. 226.
54. *ibid.*, p. 293.
55. *A Pepys of Mogul India*, p. 115.
56. Manucci. II, p. 345.
57. *Akhbarat-i-Darbar-i-Mu'alla*, 1: November, 1681.
58. *Akhbarat-i-Darbar-i-Mu'alla*, 26 October, 1692.
59. Manucci, ii, p. 100.
60. Manrique, II, pp. 105-15.
61. *Jahangir's India* Pelsaert, p. 59.
62. *Aina-i-Gujarat*, I, pp. 77-78.
63. *Akbar Nama*. Text, III, p. 193; Bev., III, p. 273.
64. *Ibid.* Text. III 266; Bev., II, p. 387.
65. *Ibid.* Text. III, p. 292; Bev., III, p. 341.
66. *Akbar Nama*, Beveridge, III, pp. 554-55; Badauni, Lowe, II, p. 323. *Akbar Nma* Text, III, pp. 377-78; Badauni, Text, II, p. 313.
67. De Laet, p. 178.

68. Manucci, I, p. 193.
69. *Ibid.*, II, p. 315; English Factories, 1670-77, p. 267; letters CXLI, p. 137.
70. Manucci, II, p. 261.
71. Jaipur Akhbarat, 16th December, p. 1666.
72. Letters, LI, p. 52.
73. Anecdotes, pp. 96-97.
74. Ma'astir-i-'Alamgiri, p. 116.
75. Letters, CXLIV, pp. 139-40.
76. Akhbarast-i-Darbar-i-mu'alla, 30th September, 1704.
77. Tyranny is strongly condemned by the holy Prophet. Once he said, 'Six are the types of persons whom I have cursed and Allah has also cursed. They are those who make addition in the Book of Allah: who belie the Decree of Allah: *who rule with highhandedness and exalt one whom Allah humiliated and humiliate one whom Allah exalted; who profane Haram (Kab a) of Allah: who make violable (the respect of my family) which He has made inviolable: and lastly, those who abandon my sunnah.*' *Mishkat*, vol. I, p. 71.
78. *Qaraunah Turks*, p. 51.
79. 'Aziz Ahmad, pp. 261-62. This case has been recorded earlier in Chapter VI also, which deals with cases of murder.
80. Ibn Battauta, while passing through the city of Bayana, saw one of the inhabitants of the town, a man of handsome appearance, sitting at the threshold of his house, both of whose hands and feet had been cut off by Malik Mujir: *Rehla*, p. 152.
81. *Rehla*, p. 152.
82. *Tarikh-i-Dawudi*, p. 44.
83. *Tabaqat-i-Akbari* (Eng. Trans.), vol. 1, p. 312; Briggs, vol. 1, p. 3369.
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85. Orme, pp. 450-51.
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